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American Government in Action Series

PHILLIPS BRADLEY, *Editor*

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American Government in Action

Public Policy
and the
General Welfare



CHARLES A. BEARD

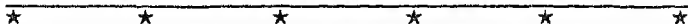
FARRAR AND RINEHART, INC.

Publishers

New York



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Editor's Foreword

THE LITERATURE of politics has been one of the major forces in our national life. Much of it, especially before the 1860's, although polemic in purpose and form, contributed significantly to the shaping of governmental institutions and policies. Another main current in the literature of politics emerged just over a century ago. We had by the 1820's matured sufficiently to begin to review our own development as a nation. Scholars and lawyers became interested in the observation and appraisal of the institutional patterns of our political order. The new approach was reflected first in formal expositions of the Constitution and later in hardly less formal analyses of the workings of government. As the state became more complex in its organization and more comprehensive in its activities, observation and appraisal of government were, however, too often channeled into rather rigid—and frequently narrow—categories of analysis. The influence of cultural, economic, and social forces on political organization and procedure, the concept of government as the nexus of reconciliation or adjustment of conflicting ideas, interests, and institutions within a dynamic society such as ours, only incidentally affected the scholarly "disciplines." The attempt to apply to the American political scene the catholicity of outlook of an Aristotle or a Montesquieu is indeed yet to be made. "The art of governance" is all too

frequently identified with the minutiae of the government's structure or procedure.

There is one brilliant exception. Just a century ago this year there appeared the second volume of Alexis de Tocqueville's *Democracy in America*. His unique contribution to our understanding of America—today no less than in the 1830's—was that he saw government in action as a focus of the desires and purposes of the people in all their daily manifestations, as an agency for the democratic accommodation of cultural, economic, and social tensions within society.

It is in this tradition that we who are co-operating in this series have thought it worth while to add to the already voluminous literature about American government. Current discussion of a "functional" approach to its study is in fact a return to the course which De Tocqueville charted as to how and with what tools government should be observed and appraised.

No single refracting lens can, however, today catch all the variables in a political spectrum, the "invisible radiations" of which filter into every aspect of the hopes, desires, and purposes of a people bent on making the ideals and practices of democracy effective. We have sought to bring together, therefore, in this series the special competence and the varied outlook of some of those who in recent years have been responsible in significant ways for setting government in action or of observing and appraising it as it functions in the many aspects of the nation's life. The series as a whole should give citizens and students alike an adequate view of how our national government functions. The individual volumes analyze the institutional forms—constitutional, legislative, executive, administrative, and judicial—at the critical points where they affect, often determine, the workings of a democratic system. The problems selected for discussion in the series are today, as they have been in the past, foci of public debate and political pressure. They are areas in which emergent ideas

and forces are molding the future of American democracy. We hope that these volumes will stimulate further analyses, more searching appraisals, and more informed judgments by our fellow citizens of today and tomorrow.

The relation between public policy and the general welfare has again become, during the past decade, one of the central issues in American government. Legislative, executive, and judicial interpretations have given new life to a phrase in the Constitution which had for more than half a century lain dormant as an instrument of public policy. In the arena of national action, varying concepts of the meaning of the general welfare once more emerged as battle cries of opposing interests. Professor Beard here illuminates the conflicts over its interpretation—and application to new experiments in economic and social policy—with the wider perspectives of the *historical background of present-day ideas*. He shows us that any broad and humane conception of the general welfare as a positive dynamic in legislative and administrative action is rooted in the view of the nature of man and of the state which, for more than two centuries, nourished the democratic faith. How that view can be made effective in our own time is here examined—and reanimated.

PHILLIPS BRADLEY

Queens College
May, 1941



Preface

THE SELECTION and organization of materials for this volume—parts of which have appeared elsewhere—are designed to emphasize certain aspects of political science which have a continuing interest, especially those with a particular relevance to our own times. They refer especially to one of the crucial questions of the immediate past, the reorientation of our ideas about the relations between public policy and the general welfare. The primary conceptions of the volume may be summarized as follows. We confront a crisis in political life and must restore ethics to its place in political thought. Whatever may be our scheme of thought, we work in a heritage of ideas and interests bequeathed to us from former times. Among these ideas, the idea of democracy is of primary importance to us today and its nature must be explored. But democracy is only one element in the American system and we must consider other essentials. Two of the essentials are authority and liberty—power and freedom. The Constitution of the United States provides for both; indeed, the very word “constitution” itself implies limited government. Hence it is useful to consider the Constitution as a system of power and as a system of liberty. Liberty is both cultural and economic; it pertains, for example, to freedom of religious worship and to rights of property. The side of cultural liberty has been neglected and it is now ap-

propriate to emphasize it. Constitutional liberty has been interpreted to mean economic *laissez faire*; this has been over-emphasized and it is appropriate to redress the balance. All powers granted by a constitution, whenever expressed in law, depend upon administration for enforcement; hence administration becomes central to the theory and practice of political science.

Some obligations must be acknowledged: for Chapter I, to the *Journal of Social Philosophy*; for Chapter II, taken from my *Open Door at Home*, to The Macmillan Company; for Chapter III, to the *Yale Review*. Chapter IV is based upon my memorial lecture delivered in honor of Senator Bronson Cutting in 1936. Chapter V is taken from my address before the Congress on Education for Democracy, at Columbia University, in 1939. A portion of the chapter on administration was read at the Conference of the Governmental Research Association at Princeton in 1939. A few mechanical changes have been made in preparing the manuscript as a part of the series.

CHARLES A. BEARD

New Milford, Connecticut
May, 1941



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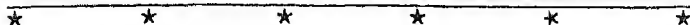
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Chapter I

The Crisis in Political Thought

FOR a long time many students of government imagined that politics could be made a kind of natural science, good always and everywhere, especially if their methods of research, compilation, and exposition were used persistently enough. As they toiled away at the business, this idea was a great inspiration and consolation to them. From time to time systems of thought were announced as sciences, perhaps as the real science at last. The system of natural liberty, expounded by many from John Locke to Adam Smith, was one. The utilitarian scheme was another. Marxism was a third. Then fascism was announced as the real discovery and last word on the subject.

The Intellectual Crisis

Some of these systems have laid pretensions to inevitability. They claim to represent what *is*, not what *ought to be*. Indeed it is regarded as the crowning achievement of science to describe things as they actually are and will be, in spite of our little hopes, aspirations, and fears. According to such a system, ethics must be ruled out of account. That belongs to preachers. What is good in itself or beautiful, what *ought to be* on any ground of goodness, beauty, or utility—all this has nothing to do with science. Such ideas of the good and the

beautiful exist, of course, but "a real science" pays no attention to them, unless it is the attenuation of contempt.

But this kind of cocksureness is now in difficulty. Although it was criticized all through the nineteenth century, it has recently reached a state of internal and external disturbance which may be truly called a crisis. In our own times the exponents of all systems of thought, including under that head all social and political philosophies, are now troubled by doubts. If they are still convinced that they have the truth, they nowhere find practice conforming to their theory with pleasing exactitude. Broad and sweeping as these generalizations are, I believe that they fairly represent the intellectual state of Western civilization and the posture of objective realities in politics, economics, and human conduct.

In a way, of course, the situation in which we find ourselves is by no means entirely novel. Skepticism and sophism have beset mankind with a high degree of constancy since the dawn of thought and systems of thought. The conflict between the ideal and the real, as Meinecke remarked long ago, has filled the history of centuries with tragedy. Aristotles and Senecas have been scattered profusely through the ages. Even in the nineteenth century, John Stuart Mill had his John Ruskin, and Karl Marx had his Alfredo Pareto. But at the close of that "wonderful century" the pervading spirit of the West was optimism; despite the gloomy carping of Herbert Spencer, the economists of capitalism were on the whole rather well satisfied with themselves and the prospects before them. And, on the other hand, Marxians were unshakable in the faith that they were on the right track and that things would turn out their way. Nor did Catholic exponents of the logical faith, though saddened or made angry by the march of liberalism and secularism, announce that the conquest of the world by the Church Militant had been, after all, an idle dream. The note of the times was a note of assurance.

The note of our times is the note of questioning, if not a questioning of the faith, then at least of the possibility of subduing practice to the rules of the faith. It is true that many still speak bravely of recovery or of returning to the good old days or of the coming triumph of the proletariat, but the literature of each faction betrays corroding uncertainties, and the squabbles within factions disclose fissures in the verbal unities. This is not to say that any of the systems is on the point of unconditional surrender, but that all of them are having domestic difficulties.

Let us take first the system of nature, the system of natural rights, which rose to a high pitch of enthusiasm and expectancy by the middle of the nineteenth century and could point to a large body of consistent practices. In theory and practice the range of this school was immense. Its assumptions and ideas penetrated all departments of thought, even biology, for Darwin got his germinal idea from Malthus. Its assumptions and ideas found expression in constitutions, statutes, and judicial decisions. For example, the due-process clause of the Fourteenth Amendment was written by a passionate exponent of natural rights, John A. Bingham; and for a long time judicial decisions under that provision enforced the good old rule of "anarchy plus the police constable." While Justice Holmes declared that the Fourteenth Amendment did not enact Mr. Herbert Spencer's *Social Statics*, he was a mere dissenter.

To the broad system of natural rights the practices of statesmen conformed in many places and in many relations, and in various respects they still do. Intransigent free traders seem to be few in number now, but probably a majority of the academic economists in the United States still believe in a "natural" system of international exchange and imagine that things would be better, if not all right, were the nations of the earth suddenly to lower their "trade barriers." Despite the charges of collectivism hurled at the New Deal, the lead-

ing advisers of President Roosevelt apparently have believed all along that the system of "natural" competition would bring prosperity, if certain speculative practices and specific abuses were forbidden by statute or administrative order.

For readers familiar with the history of the past two hundred years, no additional illustrations are necessary. The system of natural rights has powerfully affected thought and practice in the Western world and is still powerfully represented in both fields. Yet its empire is disintegrating. Its dominion has been and is being curtailed. In every quarter its assumptions and ideas are being challenged by both theory and practice. Nowhere, save perhaps in obscure corners, is a thick-and-thin defender of the system to be found. Over its details and implications devotees engage in endless and unseemly wrangling. In the presence of the items of practice, they are divided. Olympian certitude has exploded.

A similar fate has befallen Marxism, itself a kind of offshoot from the system of nature. Like the latter, it, too, was long a mere theory, prophesying practice but unrepresented by practice. Its exponents, no doubt, quarreled violently over the true milk of the word and over the correct exegesis, but as against other systems they preserved a fair degree of unity—while in the opposition. And Marxism also has exerted a powerful influence on theory and practice. As in the case of natural rights, it has penetrated all departments of thought, including mathematics, and has affected practice, positively and negatively. Its first great triumph was in Russia in 1917, and in fierce jubilation Marxism celebrated the coming triumph throughout the world. For a time all seemed to work in Russia according to the prognosis, and exponents redoubled their confidence in their certitude.

Then something happened to the time schedule. Marxists in faith fell out among themselves over the correct line and over forms of practice under their immediate control. The breakdown and utter collapse of communism in Germany,

Italy, and other places, the violent split in Russia, the fierce conflicts of tongue and fist between the school of Stalin and the school of Trotsky, the rush of Stalinists in the United States to prove that they were as American as George Washington and Thomas Jefferson, all conspired to shatter monolithic Marxist theory and practice. Despite brave pamphlets and bold speech emanating from splinters and fragments, Marxists are utterly bewildered in the presence of practical issues—tactics; and they are questioning the validity of a system of thought that cannot give them unequivocal directions for correct actions. In fact the controversies among Communists are as bitter as the long-standing dispute between Communists and Social Democrats. No more than in the case of the system of nature, has the world gone to suit the exponents of Marxism.

Of the systems lying between natural liberty and Marxism, or outside as modifications, it is scarcely necessary to speak. They have all been affected by the upheaval of recent years. There was a time, for example, when an apostle of Henry George could say: "Change a single line in the statute books and you will bring prosperity to American farms and factories." I heard this said about thirty years ago. The speaker still lives but he no longer recites that line. It is doubtful whether many followers of Henry George would have the hardihood or the invincible faith necessary to offer the single tax as the one sure way to peace and prosperity now, at least without suffering some qualms of conscience.

Only the system of fascism has the appearance of confidence and certitude, but it is scarcely a system. True enough, hundreds of volumes have been written in Germany and Italy in efforts to give the appearances of philosophy to a series of acts and verbal declarations. In essence, however, fascism is a combination of personal tyranny, state socialism, great capitalism, militarism, and war. Besides, fascism is young, and through controlling the agencies of thought

it has up to the present succeeded in suppressing domestic criticism of its own proclamations. By following the methods of Bolshevik expediency, it generally avoids contradictions between theory and practice by declaring any practices in keeping with the theory. Probably there are many doubts in Italy and Germany; what will happen to unity and certitude when Hitler and Mussolini, as mortal men, pass from the scene can only be dimly guessed; what they may bring down upon their own heads before they have given up the ghost is likewise problematical. But given the eclectic nature of their thought, the local colorism of their ideas, and the fragile character of their structure of power, the possibility that their aggregation of phrases and practices will harden into a system seems to be slight at best. In any event the future of fascism is uncertain. It may develop into something universal for export and have a long run, like the system of nature and Marxism. That much may be conceded. At present it seems to be making gains as a scheme of thought; as practice it sweeps like wildfire through other countries inexperienced in self-government.

The process by which the several types of social philosophy have arrived at the stage of doubt and trouble is long and complicated. A comprehensive treatment of that process would require rewriting the history of Western civilization during the past three hundred years. Some features of the process are, however, familiar to all persons even tolerably well acquainted with that history. One feature is the conflicts that have taken place between exponents of the several types. Although many of these exponents are obtuse and impervious to unpleasant thought, others have intelligence and can see something in the systems they assail. Thus a certain modification of views occurs as a result of conflicts. An interpenetration comes about, which mitigates the severity, dogmatism, and certitude of each. Another feature of the dissolvent process is the use of and unfolding of thought in each camp

of exponents. The revision of Marxism is a case in point. Marxists themselves had begun it long before Stalin deposed and exiled Trotsky. The revision of the system of natural liberty began even before the system had come to full flower, and Veblen exploded the works before the nineteenth century came to a close.

A third feature of the dissolvent process has been the impacts of brute experience, that is, the revisions or revolutions of practice. There are, to be sure, many shivering and gibbering ghosts of the past that still recite old phrases: laissez faire and free trade will save us, or the proletarian revolution will be followed by the spring into freedom. But the stark realities of British, American, and Russian practice operate as dissolving forces in all minds save those that are case hardened or are enclosed in ivory towers. And the practices and plight of the fascist nations at least suggest caution to all sober persons who might be inclined to jump from the frying pan into the fire.

That the dissolution of the several social philosophies is no temporary phenomenon, to be followed by a complete rehabilitation, seems to be indicated by all that we know of history. History does not repeat itself. Nothing is more false than the phrases: history repeats itself and the more things change the more they remain the same. The state of the world at no time between 800 A.D. and 1939 corresponded to the state of the world at any previous date or period of history. If we know anything at all we know that it is impossible to restore today the state of society, economy, 'thought, and feelings that existed in 1928, 1913, 1895, or any other previous year that may be mentioned. If this is true, and it does seem to be, then the probability of "restoring" any social philosophy to its former position of certitude and dogmatism is so slight as to be unworthy of consideration or effort. England of 1660 was not England of 1603, despite Macaulay's apologetics. France of 1815 was not France of 1789. Nor

could a victory of the Republican party in the United States in 1940 have restored the economy, thought, feelings, and legislation to the state prevailing in 1928. The past is closed. It cannot be recovered, even in memory or historical treatises or in the most subtle shadings of fiction. Only the future remains before us, however hard we struggle to "stumble forward into the past."

The Resolution of the Crisis

If the foregoing considerations are true, that is, correspond to relevant facts in the case and are supported by a consensus of competence, then a number of suggestions seem pertinent to the situation in which we find ourselves. All the systems of social philosophy presented to us are shaken and riven by theory and practice. We are, therefore, in a crisis of thought as well as economy and politics—domestic and world. The business of rehabilitating any of the competing systems of social thought and restoring its former power and prestige is beyond our powers. If it were logically possible, the state of practice would break rudely in upon its factitious unity and certitude. This is not to say that any or all of our inherited systems are "wrong" or that they have lost all meaning or validity for our thought and our practice. But it suggests an intimation that something new is required by the exigencies of our situation, assuming that intellectual activities will not stop or sink into impotence and that society will not dissolve as did the Roman Empire in its last days.

It may be expected, although it cannot be proved, that some powerful mind will arise in time and make a new social synthesis on the basis of what has happened to thought and practice in our own time. Such a synthesis will not discard all that has been thought out and incorporated in previous systems. But the form that it will take we do not know. If we did, anyone of us could produce it by describing it, as we

can describe the synthesis of Hobbes, Rousseau, or Marx. We are merely aware of the dissolving processes at work in acquired theory and practice and, on the assumption that constructive faculties will continue to operate, we may dimly expect new systems to emerge. Various efforts at construction are already open to observation, but none of them has gained the dynamic or drive of Rousseauism, Adam Smithism, or Marxism.

How can those of us unable to bend the bow and send the speeding arrow contribute, if at all, to the circumstances favorable to the coming of a creative genius in this field? Certainly little, by merely reciting the old systems or by merely criticizing them in terms of internal contradictions or conflicts with practice. Our tasks, if the discharge of them is to aid in the work of reconstruction, must take other forms.

Several preliminary operations lie before us. First of all is a clarification of the business of constructing a social philosophy. Who are we that undertake the commission or obligation? What assumptions do we make at the outset? What is our attitude toward freedom and necessity? What limitations of time and circumstance impinge upon us? To what extent are we merely seeking to justify or revise inherited preconceptions? In drafting a general social philosophy can we wholly eliminate the care for what ought to be from the situation and consider simply what is and will be? Other questions of this order will easily occur to the reader.

Owing to the advances which have been made in social psychology and especially the sociology of knowledge, we are put on our guard against the naïve assumptions which characterized most if not all of the social philosophies of the preceding centuries. We now deeply suspect our cherished intimations from the past, our omniscience, and our omnicompetence. The sophisticated among us can discover at a distance the slightest taint of a Ricardian, a Marxist, a Spen-

cerian, or a Thomasian. Most of us can and do laugh a little bit up our sleeves. No Erasmus has yet appeared to do humorous justice to the dust-sifters and nose-scratchers, but the brethren of this huge fraternity, if caught off their guard, are likely to scamper quickly down from Olympus and admit at least some small shortcomings. Having established the habit of testing all things, we are in a better position to make a fresh beginning and to watch our steps as we proceed.

If the process of clarification proceeds far enough, I am inclined to the opinion that we shall give up the idea of writing any social philosophy along the lines followed in the construction of our inherited systems. I am about convinced that the old road has reached a dead end, that we shall have to make a revolution in our assumptions and modes of procedure. For practical purposes all our great systems have tried or pretended to mirror the world of actuality, and to represent the data of social living as coming within some scheme of deterministic sequences, divine or human. To be sure, none of the authors of these systems has been able to order his data under this design in a convincing fashion, and the logical armor of every system appears to be full of holes. Not even Marxism, one of the most deterministic of all systems, provides a calculus of social evolution.

For a long time after Darwin made his amazing pronouncements, historians, as Henry Adams tells us, seemed to imagine that they could disclose the secret of historical events, reduce them to order and law, and make an exact science of them. If any historian believes now in that hope, he does not shout his faith from the housetops.

In my opinion, the fatal mistake was made when, under the influence of physical science and its marvelous achievements, students of human affairs leaped to the conclusion that the data of human affairs are identical with or akin to the data of physics and that by the application of the scientific method a science of history or of society would emerge.

As I see things, a large part of our troubles arises from that preliminary, and unwarranted, assumption. And on this ground I believe that an indispensable step to working out an effective social philosophy will be the complete abandonment of this constricting philosophy. A true social philosophy of this style would mirror the universe, correspond precisely to the data of the universe. It would represent the universe as deterministic or as indeterminate. In the former case we should be enslaved to a system of laws; in the latter case, we should not know what to do.

I see no reason for believing that the human mind can grasp and reduce to words a true social or political philosophy in the sense of the term used above. Efforts to write it probably will not be abandoned, but such efforts are likely to lead nowhere, except into scholastic refinements and wishful thinking under the guise of more or less sonorous phrases. Nor do I think that procedure along that line will do more than add to our present confusion in theory and practice. The study of past social philosophies has its utility, and the thought of the future will be affected by them. But to follow similar methods and pursue similar hopes seem to me to put ourselves on the level with those minor scholastics so sagely celebrated in *In Praise of Folly*. So I propose that we abandon the idea of a scientific or deterministic social philosophy and likewise the idea of a value-free social philosophy.

Values as the Basis of a New Social Philosophy

I believe that at the bottom of all social philosophies are conceptions of values, of things deemed desirable and good, and things deemed undesirable and evil. Therefore it would seem to be a primary task of any new social philosophy to admit these values, set them forth as fully and clearly as possible, and then proceed to a consideration of the probabilities, limitations, and methods of realization, employing the most

rigorous scientific method in the process. This is the only procedure that my intelligence and knowledge, such as they are, will permit me to recognize as worthy of our time and energy now or likely to get us anywhere in the direction of a better ordered world than the one in which we live.

If all social philosophies rest on assumptions respecting values, contain values, and have a bearing on values, then it follows that the idea of a value-free, objective social science is an illusion. Men may and doubtless will continue to pursue it, as they have pursued illusions from time immemorial, but those who are interested in truth, that is, the correspondence of theory with things known, will abandon it and announce the abandonment. *Der Knoten, der nicht zu lösen ist, muss durchhauen werden.*

On the basis of this finding, the correct procedure in constructing a new social philosophy will be to begin with an analysis, indication, and statement of the values which are asserted as central to the whole structure of the thought. The process of selecting and formulating these values is not easy. The operation is hazardous. It endangers professional status. It will provoke to laughter or anger those who boast of their science, their hard-headedness, and objectivity. It involves wide knowledge of the values that have been asserted in times past by men and women, sometimes at the price of dungeon and death, and a knowledge of the values that have been worked into institutions. It calls for a wide knowledge of values in practice, of what is possible and probable in the way of realization. It involves decisions as to the time and place in which asserted values may be realized in whole or in part—decisions which require knowledge and the exercise of intuitive insight. But I do not see how this undertaking can be avoided if we are to have a truthful social philosophy, that is, one corresponding to knowledge in the present state of its development.

After the statement of values asserted comes the social

philosophy. This will deal with the extent to which the posited values have already been realized and the processes by which greater realization may be effected. In this operation all the instruments of science should be employed, even knowledge of the physical sciences as well as economics and sociology broadly conceived. The potentials of technology, the natural resources available, objective social relations now existing and in process of becoming, conflicts of interests, the passions of men, their avarice, and their lusts for power—all these should be studied with as much objectivity as human nature can command and with as much comprehensiveness as a finite being can attain.

The prescription thus written out is undoubtedly "a large order," but it seems to me that thought about social philosophy is moving in the direction indicated. A large body of literature could be marshaled in support of this view, ranging from Croce's *History: Its Theory and Practice* to Mannheim's *Ideology and Utopia*. The state of uncertainty and perplexity reigning in the very midst of the so-called objective school is proof that the old assumptions of absolute neutrality no longer satisfy the human spirit, no longer command the almost unbroken consensus of competence. So, at least, it seems to me and, after much searching, with all the disinterestedness I can muster, I find myself unable to see any other turn open to social or political philosophy than that indicated above.



Chapter II

Ethical Elements in Statesmanship

WE ARE in fact in the midst of a crisis in thought, economy, and politics. And none of the systems of thought already offered as solutions of the problem presented by the crisis,—whatever pretensions to absolutism, determinism, and omniscience may be made in their name,—can give to policy the unequivocal direction guaranteed to work. These systems of thought all rest on a study of past performances out of which the crisis has come, and past performances cannot reveal the categorical rule for relaxing the tension, because they have brought us into the present dilemma, that is, have been found wanting in various and grave respects. Defeat does not, in the nature of things, of itself supply the clear mandate requisite to victory. For exigent reasons also science can furnish no equation of triumph; it is an instrument of purpose and, as science, it has nothing to say about the uses to be made of its findings.

The knot cannot be untied by historic systems of thought or by science. It must be cut. These systems of thought and reliance on the scientific method have led us up a blind alley, to a dead end, from which there is no escape. We must retrace our steps and consider again first principles. Our duty, our form of action, in the presence of the crisis is written in no known law of iron destiny, in no statistical curves showing past performances, in no axioms arising out

of experience. Nothing that is known even tells us that we must do anything at all about the crisis. The very conception of action with reference to it is grounded deeply in the human spirit, in the desire or wish to do something about it—a propulsion beyond the reach of a statistical or rational probe. It is at this point that inquiry must start and thus a reversal of scientific procedure in the old style is required; the knot is cut by an act of will.

The Crisis in Statesmanship

The essence of the crisis itself is dissatisfaction with the present disarray of things. Were there no dissatisfaction, there would be no crisis. Now dissatisfaction springs from the belief that the present state of things is not wholly good, does not meet the requirement of some ideal existing in the mind—some conception of greater economic security for the American nation, of well-being, deeper and wider than is now prevailing. Since this is so, the first task is to bring out in the mind as precisely as possible the ideal arrangement of things with which present defeats are contrasted in a manner to produce dissatisfaction—the crisis in thought. The ideal, however dim, is at the bottom of the difficulty. No ideal, no intellectual discontent. No intellectual discontent, no crisis in economy or thought.

The knot, which cannot be untied by thought as meditation, can be cut by act of will. The condition precedent to attacking the problem of the crisis is then to determine: What is the ideal arrangement of economic and social life which we desire to bring into being, and thus rid ourselves of the undesirable things which make the crisis for us? Simple as this formula is, it constitutes a revolution in the positive and scientific procedures to which contemporary minds have so widely enslaved themselves, to their own de-

feat. By no other procedure can confusion in thought and policy be avoided.

When we have formulated as clearly and realistically as knowledge will permit, the ideal—the kind of nation we desire to see brought into being, from which the causes of present discontents are eliminated as far as possible—then and only then can knowledge and science provide firm, and in some cases, unequivocal, direction to the realization of policy. For example, there is nothing in the statistics of industrial accidents and diseases which compels a state in the American union to do anything about such accidents and diseases; but, if the state is dissatisfied with the condition they present and resolves to bring about a better (more ideal) condition, then knowledge and science can furnish guidance and fairly exact calculations for formulating and executing the resolution. Again, there is nothing in the facts of deaths and sickness that compels anybody to set up a scheme of insurance; but, if action in the premises seems desirable and action is resolved upon, then knowledge and science can furnish fairly deterministic rules of procedure. It is when desire exists, purpose is clarified, and action is resolved upon that the great and precious instrumentalities of knowledge and science have meaning and can set forth ways, methods, conditionalities, and determinants of realization. As the world appears in contemporary thought no other course is open to us, if we would avoid intellectual and spiritual defeat and resolve the crisis by bringing the real into some fair approximation to the ideal.

Since in its very essence the problem is national and public in character and involves the formulation of a new and better policy for the United States in its world relations, what is the type of mind requisite to grappling with it? Not that of the contemplative philosopher concerned with a logical consistency and an all-embracing generality convincing to his scholastic colleagues. Not that of the pri-

vate person merely struggling for his own existence and bent primarily on the instant needs of immediate things—the pursuit of personal interests, pecuniary and cultural. Not that of the pure idealist who will accept nothing less than some perfect world order for all mankind—an order harmonizing with some system of world ethics. Not that of renunciation or resignation which offers only personal retreat by denying or minimizing the existence of the dilemma. Not that of the mere student or man of science committed by profession to neutrality-respecting values. The question at bottom is a public question, and any suggested solution must call for better choices and better actions on the part of the citizens and government of the United States. Hence the only procedure in preliminary thought and subsequent decision at all likely to adjust the tension is that of the statesman—of the socially minded, public personality engrossed in the public interest.

And what is the procedure open to the statesman, judging by historical examples, such as Hamilton, Jefferson, or Lincoln? He takes the world and his nation or political unit, as he finds them, using knowledge, experience, and insight or judgment in gauging the necessities which they present to his intelligence. He sees that within the border of these necessities there are appearances of choice, of policies that may be adopted, of actions that may be taken, of ends that may be attained. He clarifies his own purposes and chooses among alternatives. This clarification and choice he effects with reference to some canon of the ideal or desirable, some picture of the world and his nation as he would have them be. Even a choice between two evils involves the consideration of desirability: this bad is better than that worse. In choosing and acting, the statesman estimates proximate and long-distance outcomes with the aid of the empirical and statistical calculations available to him. Subject to hazards and aware of them, he clarifies his purpose, sets

his goal, conceives a state of affairs more desirable than the one in which he finds himself, proceeds to action, submits his program, ideal, decision, and action to the long judgment of his nation and the world. In the sphere of complicated human affairs this is the only procedure open to an intelligence that is not defeatist, passive, or utopian.

Policy Making through Knowledge

So-called scholarship, science, and independent research, if they are to grapple with the problem presented by the crisis in economy and thought, can take no other course than that followed by the statesman. They may, no doubt, cling to their neutrality, real or pretended, but in this case they cannot formulate new policy, which involves unneutral choices among possibilities of better things to be realized by action. In fact, with respect to national issues or any large area of human affairs in time and space, the scholar or man of science is not and cannot be neutral, for he must select facts and organize his reports on occurrences; and the very process of selection and organization is a process of valuation, of choice and emphasis. The offerings of private investigators—Adam Smith, Ricardo, Marx, Herbert Spencer, and William Graham Sumner, for example—like those of the statesman, are and must be submitted to the same tribunal, to the judgment of history. And the only position in relation to the problem before us, which the scholar conscious of his role can take, is in effect, if not deliberately, that of the statesman, without portfolio, to be sure, but with a kindred sense of public responsibility.

This introduction of good, better, and best—ethics and aesthetics—into economics and politics calls for more than the mere insertion of moral maxims into the interstices of private and class interests. It means nothing short of a revolution in attitude, procedure, and emphasis, a frank recog-

nition of the fact that ethics and aesthetics underlie and are essential to the operation of any Great Society—a reversal of the approach to policy made by the so-called empirical or practical sciences. The conclusion or assertion, as the reader prefers, is so fundamental to any attempted adjustment of the contemporary crisis that it must be examined in relation to conceptions of policy offered by inherited systems of thought, considered on its merits, and applied to the issues in hand.

The four great schemes of thought which have been evolved as solutions of the problem of the periodical crisis and have gained ascendancy in foreign policies—laissez faire, imperialism, fascism, and communism—are alike in resting their structures on material interests and in either rejecting or minimizing ethical and aesthetic considerations—of the Ruskinian type, for example. The beginning of this mode of thought on a large scale is to be found in classical economy. The authors of that system took man as they thought of him at the close of the eighteenth century, and ignored for their purposes the fact that the social order of Western nations was the product of a long cultural development in which had been created the disciplines, loyalties, integrities, and moral values indispensable to the cohesion and operation of that order, such as it was. They then made an abstract man motivated by material interests and formulated a mechanistic system of economy based on that assumption or premise. The severely logical among them excluded ethical and aesthetic considerations almost entirely. Some, less rigorous in their logic, more sentimental, or perhaps endowed with a more realistic sense, sought to insert such considerations into the frame of their system after it was completed, without disturbing its perfection of structure. But those economists who thus took ethics and aesthetics into account generally contented themselves with the apparent afterthought that the unrelenting pursuit of private

interests would result in "the general good" under "the invisible hand," or they added homilies on thrift, industry, sobriety, and honesty—virtues particularly useful in masses of working people who encountered no generous realization of material interests in their sphere of operation. But none of these ethical and aesthetic side lines in classical economy was allowed to disturb fundamentally the doctrine of material interest.

When the creed of *laissez faire*, especially as applied to free international trade, failed of adoption outside Great Britain, and the system of imperialism was substituted, the assumption that the pursuit of material interests is the prime mover was not rejected or modified in any way. On the contrary, it was taken for granted. To be sure, ethical phrases, such as the white man's burden and moral obligation, were freely and loosely used in the new literature of policy, but in practice they were treated as useful affiliates of material interests, not as independent and often opposing primordials.

It was in the intellectual climate created by the heavy emphasis laid on material interests that the communist body of doctrine came into being. In other words, Marxism stems immediately out of preceding conceptions. If the pursuit of interests is good for the immediate beneficiaries, then it is good for the working classes, whose secondary benefits have not been so evident and generous. Thus the very weapons forged for the promotion and protection of material interests in domestic and foreign policies were turned against those who had provided the armament. In this fashion socialism became hard, practical, and "scientific," as distinguished from "utopian." The statesmen of *laissez faire* and imperialism had made enormous practical gains in power and advantage by appealing to material interests and using violence in the conquest of domestic power and foreign markets; so the statesmen of socialism would take

a leaf from the book of their mentors and pursue the same tactics under the guidance of doctrines similarly realistic in nature.

With special vigor and ostentation, many Marxists threw ethics and aesthetics out of their system of thought. The ethics of thrift, industry, sobriety, honesty, and moral obligation to the benighted they regarded as mere covering ideology designed to delude working classes and backward peoples into humble acquiescence in the system of material interest imposed upon them in practice. The Marxian rejection of ethics was also supported by a firm belief that professors, philosophers, theologians, priests, and persons who specialized in ethics were as a rule associated with, and servants of, the immediate beneficiaries of material interests—landed and capitalist, lay and clerical. In these circumstances, Marxism in theory made a rather clean sweep of public ethics. To be sure, Marx himself did not pursue material interests, for his life was one long story of material sacrifice for himself and his family, nearly always on the verge of starvation. Nor has Marxism, in practice, rejected ethics; its promoters are full of moral indignation; they hurl moral epithets at their opponents; they speak of “justice” for the working classes; and they appeal for “loyalty” to the “cause.” But Marxism, especially in the hands of systematists, assumes the predominance of material interests, makes the communist outcome inexorable, and treats the discussion of ethics and aesthetics as largely irrelevant, if not foolish.

In fine, all these schemes of thought have been assumed by their proponents to be somewhat in the nature of exact sciences, from which choices and the use of ethical and aesthetic interest and imagination are largely, if not entirely, excluded. They are made up of alleged axioms drawn from the structure and flow of things, which are supposed to supply the “right” word or “right” action for every occasion,

contingency, possibility, as a machine turns out the one article for which it is designed.

Yet when subjected to the test of practice, none of them does provide automatically the words or actions which are accepted as "right" by all true believers. Even Marxism, with its strong emphasis on necessity in history, the inexorable course of events, does not pretend to supply a complete bill of particulars so precise that a Marxian leader, confronting a set of occurrences, such as a crisis in capitalism or confusion in the making and execution of a five-year plan, can always find the absolutely one thing to be said, done, and guaranteed to work. The dictatorship of Soviet Russia is not untroubled by the possibilities of choice or by deficiencies in honesty, reliability, sobriety, and other ethical qualifications. Nor do the aesthetic designs of Russian architecture and commodities flow inexorably out of the material objective relations provided in the proletarian order of things. Moreover the supreme purpose, professed and avowed, is an ethical end—the welfare of Russian workers. Even when learned Marxists, such as Leon Trotsky and Arthur Rosenberg, attack Soviet policy and practice as erroneous, they profess to aim at a greater good than socialism in one country, namely, international communism. Where there is difference of opinion, there is doubt, and choices, when made, are made with reference to good, better, or best means of reaching some goal, for the moment ideal, presented as a good—certainly not as an evil or as a matter of ethical indifference.

Admittedly, the statesman may conceivably have in mind only those choices and actions which will keep him in power or add to his power as a personal possession. But there have been few such simplified personalities in directing positions within historic times. Machiavelli, who is popularly supposed to have made brute power an end of statecraft, in fact took no such unequivocal view of the art.

In his discourses he scorned the sheer brutal passion to rule and advised the utilitarian middle course. "Let no State believe," he said, "that it can ever formulate sure decisions, but let the State remember that all decisions are doubtful, because it so lies in the nature of things, and that one can never escape one evil without falling into another; wisdom consists, however, in discounting the quality of the evil and viewing the lesser evil as good." Deep in his consciousness lay the conviction that the commonwealth had precedence over private interests and that the conditions of state greatness were best assured in republics; while naturally he did not advance this doctrine in *The Prince*, he always had in the back of his mind a better ordered and nobler Italy.¹

The Ethical Element

If this was true of European statecraft in the sixteenth century, it is still more true of the Western world in the twentieth century when statesmen, whether they are popularly elected or have imposed themselves by force, must make a certain appeal to the ethical and aesthetic sentiments of the masses. They cannot win supremacy by announcing that their sole aim is the attainment of power for its own sake. They rise by pretending at least to offer something better to the nation over which they fain would preside, not by offering neutrality or something worse than the condition already existing. There may be differences of opinion as to the value of the better offered, but there can be no doubt as to the supposed nature of the tender. It is the offering of something better, occasionally if not generally, of utopia—the restored virtue of Rome, the perfection of German *Kultur*, the welfare of the proletariat, the untaxed bacon of the British workingman, a chicken in every American pot, or the New Deal. The statesman must act; when he

¹Meinecke, *Die Idee der Staatsräson*, pp. 53 ff.

acts he makes choices; and when he makes choices he expresses a preference in accordance with some canon of ethical or aesthetic desirability.

When the statesman begins to frame his policy, he encounters certain stubborn things which may be called necessities—the land, situs, and natural endowment of the nation, the people and their habits, the heritage of ideas, beliefs and customs, the state of the technical arts, the probabilities of war in the world, and provisions for war and defense. Some of these things are unquestionable necessities in the scene and can be described, weighed, or measured. Others are subjective, embedded in emotions, traditional ideas, and sentiments; they are intangible, but the statesman must deal with them if he would remain in power. He may quarrel with some of these fixities of the nation, dislike them, and prefer others, but he knows that here preference will not avail. He may, for example, prefer the French language to the English tongue, but he cannot force the exclusive use of French in the schools, press, and law courts of the United States. Again he may think it desirable for every cotton mill worker to receive one hundred dollars a day in wages, but he cannot make his preference prevail. The borders between necessity and choice are difficult to discover with precision; many a statesman and inventor has accomplished the “impossible.” But this does not prove that there are no conditionalities and determinants in the world.

Within the borders of these more or less impalpable necessities, the statesman, compelled by his office to act, confronts one of the oldest and newest questions in history: What is good? The more he clarifies his thought and prepares himself for his task, the higher, wider, and deeper is his inquiry into the nature of American society, into its place in history, into its potentialities to be unfolded by policy and action, and into the conception of purpose to be realized in its development. If to positive and empirical

scientists the idea may be repugnant, thought about national affairs cannot escape it. Policy, purpose, and action must reckon with it, must begin by formulating a frame of the desirable to be attained, an idealized conception of American society to which are to be referred choices of policy and action as they arise and are made. That the difficulties of this procedure are great is not to be denied, but no other course is open, save perhaps the blind following of acquisitive impulses expressed by private parties with pecuniary interests at stake—a procedure that has eventuated in the present crisis.

And where shall the statesman find guidance or a firm center of reference for the determination of policy conceived as the good life for the nation? In the more or less technical works on ethics he discovers, amid much confusion, the old contradiction between absolute and relative ethics. According to absolute ethics, good is eternal; it exists outside the human mind, in the idea of God or in the reason of things. Right and wrong are absolute; in every case of doubt certainty can be obtained by reference to a fixed, immovable center. Right is forever right and wrong is forever wrong, always and everywhere. It is wrong to steal, to lie, and to kill. There is a Supreme Good, an Ultimate End, a final authority. If the tribunal of last resort in matters of faith and morals is not the Pope, it is the conscience of the individual—at least among many fragments of mankind known as the Western nations. The statesman has only to look and he will see the one true path to the good; if he has difficulties he needs simply to consult his spiritual adviser. Thus ethics becomes a branch of mechanics, with some kind of chief engineer—theologian or pedagogue—at hand to indicate clearly and positively how the machine works and the place of the statesman as a cog in it. Absolute ethics is as unequivocal as physics and appears as the spiritual reverse of that deterministic science. In fact the two are so closely

akin that they may be taken as one interpretation of the universe. Medieval historiography, Calvinism, and nineteenth-century materialism are all made of the same intellectual cloth. They are characterized by certainty, absolute certainty, in theory if not in practice.

Yet there is no rule of right and wrong posited by absolute ethics which is not violated with sanction in practice. It is wrong to steal, but mercy tempers the judgment when a ten-year-old boy is caught stealing bread for his starving mother. It is wrong to lie, but not to deceive the enemy in time of war. It is wrong to kill, but not by the wholesale under the sanction of governments. Then there are large areas of conduct in modern society which are not covered at all by the code of absolute rights and wrongs inherited from distant ages and agricultural orders. For example, absolute ethics has no unequivocal rules covering child labor, unemployment, safety in mines, sanitation in factories, hours of labor, wages, conditions of work, and a thousand other concrete realities of human conduct that appear in contemporary society. The professors of absolute ethics, although agreed on the wickedness of adultery, are divided over the chief issues of conflict in modern legislation, administration, adjudication, and foreign policy—the principal functions of statecraft. Catholics and Protestants, Jews and Gentiles, Buddhists and Brahmins, are here split into factions, torn by controversies, and as confused in policy as mortals who claim to possess no system of ethics at all.

At the opposite pole is the creed of "ethical naturalism," or relativity: all moral actions and ideas are relative; to use the language of a specialist, Sidney Hook, naturalistic ethics is to be conceived as the "equilibration of interests and their rational adjustment to environment. . . . The relativity of our ethical beliefs is *prima-facie* evidence that good and bad depend upon our primary desires, and as these change the qualities of good and bad change. . . . Whatever I desire,

says the naturalist, has the quality of good. This does not mean that the good is desired. It means that whenever we desire anything a certain irreducible quality arises which we call good." At bottom, according to this school, ethics is the frank or sublimated expression of individual, group, and class interests; in practice, largely acquisitive instincts which, as we have already seen, may defeat their own ends. Here is the ethical skepticism born of modern historical relativity: all things pass, all systems of thought are relative to transitory situations, there is no sifting and accumulation, nothing central remains, the shadow of death rests upon youth as well as old age. Stripped of all academic technicalities, this is the ethics of the main chance. Nothing is good in itself.

When the statesman transfers his attention from systems of ethical thought built up by specialists in the techniques of scholasticism to the simpler teachings of those upon whose writings most philosophical or theological schemes are erected—notably to Socrates, Plato, Christ, and Confucius, for example—he will find, not scholastic arrangements purporting to rest upon foundations of reality and self-consistent reasoning, but assertions of good submitted to the judgment of mankind. At the heart of all these teachings—whatever their theological implications—is a conception of the good life, of inner conditions of the human spirit and outward modes of human work and relations deemed desirable in themselves and conducive to a desirable order of things. These assertions are not *proved* by deduction, induction, and discrimination. They are put forth on their own merits out of experience and belief. Their practical validity depends upon the degree of their appeal to human beings in various conditions of life, not upon dialectic elucidations. When all is said and done, the great systems of ethics, as distinguished from mere scholastic glosses and compilations, are assertions of values; and a conception of the good life lies at their core, the good life on this earth,

to be attained and realized, more or less perfectly, by practice. In the sifting that accompanies relativity, this conception gathers the support of historical accumulation.

The Christian ideal, so prominent in Western thought, separated from theological implications on the one side and from admittedly faulty practice on the other, contains certain fundamental conceptions of the good life here on earth—the good life considered as an inner state of spirit and outward relations of persons, conduct, and things. It was these conceptions which divided that ideal from the ideals of antiquity. First among them is the central belief that labor is in itself honorable as well as necessary, a source of virtue as well as wealth. "Industrial work," says Levasseur, "in the times of antiquity had always had, in spite of the institutions of certain emperors, a degrading character, because it had its roots in slavery; after the invasion, the grossness of the barbarians and the leveling of the towns did not help to rehabilitate it. It was the Church which, in proclaiming that Christ was the son of a carpenter, and the Apostles were simple workmen, made known to the world that work is honorable as well as necessary."² In this form the ideal is presented by a modern writer on the positive history of labor.

If recourse is had to medieval writers themselves, who combined a theological world picture with their picture of an idealized society, the case may be clearly presented in the language of Langenstein: "Heavy laborer's work is the inevitable yoke of punishment, which, according to God's righteous verdict, has been laid upon all the sons of Adam. But many of Adam's descendants seek in all sorts of cunning ways to escape from the yoke and to live in idleness without labor, and at the same time to have a superfluity of useful and necessary things; some by robbery and plunder, some

²Levasseur, *Histoire des Classes ouvrières en France*, I, 187; quoted in O'Brien, *Medieval Economic Teaching*, p. 139.

by usurious dealings, others by lying, deceit, and all the countless forms of dishonest and fraudulent gain, by which men are forever seeking to get riches and abundance without toil. . . . Not so, however, do the reasonable sons of Adam proceed." They, on the contrary, accept labor as necessary to life. Those in the higher ranges of government and spiritual labor "earn the right to be maintained by the sweat of others' brows" through services requisite to the maintenance of security and peace. While in this form of presentation, labor is deemed a yoke of punishment, it is also considered as the only "righteous" way of life—one necessary and crowned with honor.⁸

Around this central conception of labor as honorable, though a yoke, was built the whole system of medieval economic thought covering quality of work, wages, prices, and exchange. In that thought, "man did not exist for the sake of production but production for the sake of man." The use of wealth was not separated from the very definition of wealth. For example, a man was not considered rich merely because he had a store of armaments which he could sell at a high price to savages bent on destroying themselves and their neighbors. Capacity for the right use of wealth was deemed essential to the conception of wealth. Nor was price a simple question of the amount which could be got from another person whatever the state of his ignorance or necessity; there had to be an element of "justice" in price—an element inhering in the quality of the product and its cost in labor and materials, and bearing a relation to the needs and uses of the purchaser. The doctrine of *caveat emptor*, let the purchaser look out for himself and blame himself if cheated in the processes of exchange, was repudiated. The seller was bound to deliver quality and quantity, and the buyer, or the community, was entitled to protection against all defaults in quality and quantity. Such

⁸O'Brien, *Medieval Economic Teaching*, p. 140.

methods and policies were deemed not only ethical, as the fulfillment of divine command, but also necessary to the stability, happiness, and perdurance of society—of objective social relations portrayed in positive terms.

Despite widespread violations of this ethical system by those who professed it, the break in history introduced by the Protestant Revolt, and the rise of the value-free system of mechanistic economics, elements of the medieval conception of economy perdured and were re-formed and restated almost continuously. They lie at the basis of Carlyle's protest against Manchesterism. They form the substance of John Ruskin's economic writings, combining economy, art, and life, especially his *Unto This Last*. They are found in the speculations of the socialists, however violently their theological implications are repudiated. Many of them are central to the thinking of John Woolman, Thomas Jefferson, and Ralph Waldo Emerson. Many efforts to establish "fair practices," co-operative relations, and a stable order of economy under what is called "the New Deal" are predicated upon their functional authenticity. Their validity thus does not depend upon their Christian origins, medieval development, or theological sanctions but upon their inescapable relevance to the efficient operation of any enduring social economy.

These ideal elements are not all mere theories in the air. Fragments of the ideal are being realized in practice, illustrating the extensions and applications to be made in the conquest of misery, poverty, and ugliness—the crisis in thought and economy. In the construction of some houses, factories, parks, highways, bridges, and office buildings, in the design, substance, and marketing of many commodities, in the ways of many lives, are to be found exemplified the ideal elements of ethics and aesthetics which it is the function of policy to effectuate on a national scale. For example, if all the best features of every American city were

incorporated in the physical and social structure of a single city, a state of things more nearly approaching the ideal would be brought into being. If the best that is known and practiced in social and economic relations were brought to the center of American thinking, lifted up, dramatized, and employed in education, the dynamics of the ideal would be swiftly accelerated.

The Influence of Interests

The problem of ethics and aesthetics in statecraft is not, therefore, one of leveling all things, but of selection, exclusion, and emphasis—of building upon and with the knowledge, experience, and achievements already authenticated and established. There will be creations now unconceived or only dimly foreshadowed, but at the moment they must be clothed in the forms of the known and partially realized. Such, in mere hints and fragments, is the ethical and aesthetic heritage with which and in which the statecraft of new policy must begin and operate.

Yet in his efforts to bring into being more ideal elements of policy, the statesman cannot elude the impacts of systems of thought founded upon particular interests or of those interests themselves. He is not operating in a social vacuum where ideals are realized without effort and conflict. Each of the organized systems of thought presented to him as offering an exit from the periodical, if not continuous, calamities of economy, is associated with practical interests of economy—capitalistic, agrarian, and proletarian. Each system of thought is intricately interwoven with a system of active interests. By birth, training, and association the statesman is more or less affiliated with one or another of them. He may without thought or discrimination throw himself on the side of one or another. He may seek a compromise or an adjustment that will suffice for his day or he may take a

longer view and make a more distant projection of policy. In any case he cannot evade the social forces dynamic in each scheme and must formulate a realistic conception of their nature and probable course.

On close analysis he will find that the industrialist thesis, including territorial and commercial expansion for market purposes, employs the term "national interest" to cover an aggregation of special interests possessed by private persons and corporations. These special interests are active in politics. They contribute money to party campaign chests. They seek the election or appointment of officials favorable to their designs. Through attorneys and representatives they enter into intimate connection with government officials. They press constantly upon the various departments and agencies of the government in their efforts to effectuate their purposes abroad through diplomatic and consular intervention, protection, and benevolence. On some fundamental matters they may present a united front; on others they are divided and often at war with one another. Again and again the stronger of two special interests is able to bend action in its direction, and thus policy becomes a case of main strength—pecuniary, organized, or individual.

In the varied literature of these special interests there is no consideration of large national ends to be attained, of national interests as a whole set forth in the form of a balance sheet. Their operations are in a large measure fortuitous so far as the nation is concerned. They do not know and they cannot inform the government or the nation whether any particular operation really does redound to the advantage of the country in the long run. Such concurrence of special actions is not based on general policy. Nor can it be squared with any consistent conception of policy. An official program based upon these interests and activities is not policy; it represents an affiliation of main chances.

The agrarian thesis has likewise been founded on a special

interest—the agricultural interest; and it is divided into group interests—cotton, corn, wheat, dairy, and meat products, for example. In intent, with respect to immediate actions, these group interests within the agricultural range do not differ fundamentally from the interests of manufacture and capital. Yet in reality they are, of necessity, more intimately national than the interests covered by the industrial thesis. For the most part they are individual, not corporate, in nature. The population embraced within this economic range is rooted in the soil as planters, farmers, tenants. Its concrete and immediate operations are in the United States, and are not extended to Europe, Asia, Africa, and the islands of the seven seas. American farmers form no cartels in cereals, sugar, fruit, and chemicals with the farmers of France, Germany, or Japan. They are Americans; their operations are almost entirely confined to the United States; their affections are in the main attached to a reality that is permanently in the United States—the land and ways of life on the land. Yet the agricultural groups also constitute a special interest and bring pressures to bear upon the government of the United States. No more than manufacturing and banking interests do they present a reasoned policy of national interest, consistent and workable in maintaining a standard of life for the commonwealth.

Outside the realm of the propertied interests, though affiliated with them, are the labor interests, organized and unorganized. In the field of policy they count for little. On the whole, labor in the United States has given slight attention to exigencies of large policy, domestic or foreign. It has been content to operate within the frame of capitalism and to exert pressure on capitalists for the purpose of obtaining shorter hours, higher wages, and more favorable conditions of work, with little or no regard for the effects of such demands upon foreign commerce and large domestic policy. In the main, organized labor has taken the

position that capitalism can continue to operate on the level of the past half a century and that labor can, by pressure, share more abundantly in the good things obtainable by that process. While generally critical of "imperialism," it has shared in the fruits of the system and has at times more or less dimly recognized that the benefits it has enjoyed have come from an industrial economy based extensively on the commerce of imperialism. In general, labor has not thought its way very far into the realm of foreign policy. Socialists and Communists, to be sure, have attempted to widen the horizon of labor's outlook, but they have put forward nothing more than a vague internationalism, expressed in many phrases, which cannot be visualized as reality. If the actions of Soviet Russia are to be deemed an expression of Communist foreign policy, then national interest and sovereignty are to be retained by communism as pivots of policy, at least for the indefinite future.

Around the American nation, as well as within it, are powerful interests. The ideal nation which the statesman outlines with more or less precision in his own mind, as the frame of reference for policy, is not an Atlantis surrounded by impenetrable seas; it is the American nation with a given geographical location in a world of nations, dependencies, and protectorates, with widespread commercial relations. It is not a question of an absolute ideal but a degree of approximation permitted by internal conditions and external constrictions, considering always the possibility of European and Asiatic wars. By profession other governments are motivated by conceptions of national interest. The aim of their policy, as they conceive it, is their welfare, not that of the United States.

Any hope for a successful escape from the dilemma in economy and thought makes necessary the formulation of

new policy, and into that policy ideal elements of ethics and aesthetics must enter.

Mechanistic economics cannot provide these ideal elements. Nor can any system of absolute, naturalistic, or relative ethics, of the scholastic or academic persuasion, furnish them. Reason and logic cannot establish their validity. They are at bottom assertions of values, not demonstrations of mathematics.

There is in the cultural heritage of the United States a body of professed values appropriate and indispensable to new policy—values abundant in literature and faith, and realized here and there in practice.

In the formulation and execution of new policy, the immediate task of the statesman is threefold. He must bring his practical sense to bear in creating his idealized conception of things to be achieved in the quest for security and stability. Having clarified his purpose and formulated it in a workable program, he must, after the fashion of the Fathers in 1783-87, submit his proposal to the nation for discussion, deliberation, and adoption. With the requisite support and legislation obtained, he then proceeds to execution. This is in the American tradition.



Chapter III

The Historical Heritage in Which We Work

ALTHOUGH written histories cannot tell us exactly what to do, or what we must do in the present state of things, we know that the situation which confronts us has come out of the past, that we work in the midst of our historical heritage. Therefore, in getting our bearings, in trying to understand the ideas and interests that impinge upon us from all sides, it is helpful to know as much as we can about the ways in which things came to be what they are. For example, how government and the state arose. How present ideas and institutions and conflicts came into being. Without such knowledge our world would appear to be a huge jumble of accidents, if not a complete chaos.

Looking back through the wild welter of kingly wars, royal intrigues, international marriages, slippery diplomacy, and circumspect assassinations, we can now see rising slowly out of the chaos into which Europe fell after the decline of Rome one great state after another, with the sword-bearing monarch as the center of the process. There they stand like political milestones scattered through the centuries: England, France, Spain, Russia, Italy, and at length Germany. . . .

The Roots of the Present

The customs, institutions, and theories which accompanied this state-building operation run back in their beginnings far beyond science and machinery. Long before the close of the eighteenth century, all the paraphernalia and slogans of politics associated with the liberal creed of the nineteenth century had been developed to a systematic finish. Not a single grand political concept of the Victorian Age originated in that era of science, machinery, and political economy. Parliaments, representation of the people in government, cabinets, ministers, judges, trial by jury, supremacy of the state over the church, separation of state and church, manhood suffrage, woman suffrage, the economy of social well-being, and belligerent individualism, as practices or ideas, all had their roots in the distant past—in the age of agriculture, handicrafts, and illiteracy. Even the great principles laid down in bills of rights—civil equality, freedom of movement, liberty of press, speech, and religion, free and fair judicial process, and all the rest—date back to the age of the stagecoach and tallow candle. All that goes under the name of modern imperialism—trade, protectorates, investments, annexations, and conquest—can be traced far beyond the invention of the spinning jenny and the power loom. All that can be classified under the head of the antithesis to feudalism—abolition of serfdom, extinction of guilds, and dissolution of clerical monopoly—was in full swing long before the scream of the locomotive was heard in any European country.

In short, the whole array of political institutions, customs, practices, and ideas, and the statesmen who personified them in the great age of enlightenment—Napoleon, Jefferson, Metternich, Wellington, Cobden, Bright, Gladstone, Cavour, Bismarck, and Disraeli—antedated, in their mental origins at least, the technology which revolutionized modern

life and the natural science which dissipated the Miltonic concept of man's origin and destiny. The intellectual climate of the nineteenth century, at all events as far as the high political actors and chief thinkers were concerned, was a heritage from the agricultural age.

Far removed from the spotlight in which kings, princes, diplomats, statesmen, jurists, and politicians played their roles in glittering ceremony, were going on operations destined to change all ways of life and thought, to create a new intellectual climate, and eventually, perhaps by the year 2000, to make inevitable thoroughgoing alterations in the verbiage and practices of politics. In 1769, the year in which Napoleon Bonaparte was born, James Watt took out his first patent for a steam engine, and when the Little Corsican was carried away to St. Helena, Watt was still hard at work improving and turning out engines at Birmingham. It is well to remember that. During tense years while Metternich was trying hard to hold Europe fast to the settlement of 1815, George Stephenson was manufacturing locomotives at Newcastle; it was in the summer of 1848—Metternich's fatal summer—that the English engineer passed from the world which he had done so much to overturn. While the Reform Bill of 1832 was agitating all England, Samuel F. B. Morse was meditating on the possibility of transmitting information by electricity; during the span of his years, Gladstone, Disraeli, Bismarck, Cavour, and Napoleon the Third sparkled and glittered on the political stage. All during the years that Bismarck was discussing politics and morals in the language of Moses and the Old Testament, patient chemists were laboring in the laboratories at Giessen, Göttingen, Marburg, and Leipzig, helping to revolutionize man's knowledge of the material world and the industries by which he lives.

From the workshop and the laboratory the discoveries of the mind were carried to the four corners of the earth. In

due time they began to destroy the world of fact in which the whole system of politics and political verbiage known to the early nineteenth century had originated. By the side of the landlords who, with the aid of kings and priests, had governed Western Europe since the breakup of the Roman Empire, there now appeared new competitors: businessmen, who increased in number, wealth, and power until they became great figures in the political and economic scene. From the open countryside, political power was transferred to the crowded city. For the limited production of historic agriculture, technology substituted the apparently unlimited productive power of steam, electricity, chemistry, and physics. To the peasants likely to break out and sack castles, technology added a huge urban working class which soon showed a similar facility in making trouble for governing persons.

By technology the immediate intellectual climate in which the masses lived and worked was changed, slowly but inexorably. The old agriculturist, ignorant of chemistry and equipped with a few crude tools, was the victim of rains, floods, droughts, cattle plagues, insects, and declining fertility; and in times of distress he resorted to prayers, genuflections, and the exorcism of evil spirits. He was a man of mystification. How different was the life of the machine man in the age of science! For him the area of everyday mystification was materially limited. If his steam engine broke down, he knew that exact mechanical methods, not prayers to angry gods, would make it work again. If a typhoid fever began to rage in his city, he called in the chemist and bacteriologist, not the dancing medicine man. For him a vast mass of emotions, hopes, theories, omens, signs, and ceremonies ceased to have any meaning. Mysteries remained, no doubt, but not the little mysteries of the barn lot, wheat field, and village churchyard.

The Impact of Technology on Economy

With this transformation wrought by technology came a revolution in the system of economy itself. For more than a thousand years Europe had been living under a regime of feudalism. The term is vague, no doubt, and even at its height the system was in the process of change; but as a scheme of life it had fairly definite characteristics. Primarily it was a social structure in which the status or occupation of everyone was determined by birth or law. King, lord, bishop, priest, serf, tailor, baker, and tinker all had status and duties. Apart from the business of fighting, only the careers of priesthood were open to talent, but whoever entered that craft had immediately a definite position in the community. Under this system, industry was carried on for use or for local exchange at a just price. The accumulation of great fortunes or even modest savings was almost unknown—at least until world commerce disturbed the slumbers of Europe. Feudalism was a fairly stable order of production for use, in which all ranks had reciprocal responsibilities and obligations. The ethics of the Middle Ages, formulated by Catholic scholastics, was largely concerned with working out the moral relations of the parts which constituted this fixed social order.

As technology swept into the field of industry, it was accompanied by a new system of production known for convenience as capitalism. What is capitalism? It is not synonymous with capital goods, such as mines, machinery, and railways, for in that sense feudalism was capitalistic—it had accumulations of tools and materials used in production. Capitalism is not synonymous with manufacturing; conceivably it might take over the whole scheme of agricultural economy. It is not the same as machine industry, because it had begun to flourish before machinery was extensively used in the production of goods.

In contrast to the feudal order which it superseded, capitalism is a system of production in which the primary object is the gain of profit through exchange. Unlike primitive agriculture and handicrafts, producing for use or for local exchange by barter or at a just price, capitalism produces to sell on the most advantageous terms, that is, with the largest profit possible to the owners and directors. The area of its operations seems unbounded. While the amount of farm land in any particular country is limited, the area of capitalistic operations has no limits visible to the naked eye. The amount of goods it can turn out, the amount of wealth that can be accumulated by it, the number of men and women who can be employed by it seem capable of indefinite expansion. . . .

The Revolution in Thought

This in itself promised ultimately a revolution in social thinking no less momentous than the revolution wrought in historical theology by natural science and technology. In its essence, capitalism is "rational," that is, it is based not upon mysteries and incantations, but on calculable factors which can be mirrored in the balance sheet: plant, buildings, machines, raw materials, hands, wages, prices, output, sales, and profits. Capitalists may pray for riches, but they expect no material help from the invocation of saints. Bookkeeping, or to use the more respectable word, accounting, can cover all capitalistic operations in mathematical terms; just as mathematics can cover all operations on the technological side.

Before the nineteenth century had drawn to a close, capitalism had become dominant over feudalism and agriculture throughout a large part of the Western world. How can we discover just when capitalism became dominant? The question is not easily answered. One measure is the value of the instruments used in capitalistic production as contrasted with agriculture and handicrafts employed for use and local

exchange. Another measure is the proportion of men and women engaged in capitalistic enterprises. A third is the influence exercised by the owners of capitalistic enterprises on the operations of government, domestic and foreign, an influence difficult to assess but none the less real.

Judged by such standards, capitalism was conquering Western civilization just as Gladstone, Disraeli, Napoleon the Third, Cavour, and Bismarck were playing their respective roles in the political language inherited from the long agricultural past. For convenience, approximate dates may be fixed. For England the year of capitalistic victory may be fixed as 1846, when free trade was established for the benefit of English manufacturers. The revolution of 1848 in France, while it temporarily revealed the fitful power of organized labor, crowned the bourgeois revolution of 1830 and marked the doom of landlords and clergy as the ruling element. By 1850 the value of the instrumentalities employed in capitalist undertakings in the United States had overtopped the value of the land; and in 1865 the armies of the planting South surrendered at Appomattox. In Germany capitalism did not get into full swing until after 1870, and triumph was not politically recognized until after the collapse of Prussia in 1918.

Now, when this new Leviathan, capitalism, armed with technology, burst in upon the feudal world of guilds and agriculture, what was the intellectual climate in which thought about it had to be conducted? New facts do not automatically bring their appropriate ideas. On the contrary, new facts must be considered at first in the light of existing ideas. Capitalism and technology ran like a sword into the old web of notions about the world, mankind, and politics. Of necessity they were at first considered in terms of inherited phraseology and logic; they had to be geared up to

the opinions, morals, creeds, laws, sayings, surmises, and guesses already afloat, no matter how relevant or irrelevant they might be. For example, a bill of rights says all men are created equal; then it follows that a capitalist with a million pounds sitting securely in his counting house is the equal of a half-starved workman asking for employment at the factory gate. Was there in fact any relevance at all for giant capitalism in a system of rights designed to bring feudal lords and clergy down to the level of merchants and farmers? Yet if any thinking was to be started in respect of the new economic order, a beginning had to be made somewhere.

Broadly speaking, three systems of thought were available at the opening of the nineteenth century for those who were attempting to apply their intelligence to the swift changes then in process. The first of them may be called for the sake of convenience "the fixed order of God." This was the scholastic pattern of words evolved during the Middle Ages as appropriate to a fixed social order in which each rank or class had its status, its duties, and its obligations. Naturally the fixed-order-of-God scheme of thinking was the most popular in feudal and Catholic countries, among feudal and clerical classes.

More or less opposed to it, however, appeared another assortment of ideas, the fixed order of nature, which was to be discovered by reason and was to bring happiness when understood and conformed with. By formulating the law of gravitation, Newton gave a great impetus to the development of this idea; and the French philosophers, in their fight on the clergy and nobility, made valiant use of it. Now, this fixed order of nature was of necessity in essence mathematical, numerical, and material, and flatly opposed to the system of sentiments associated with the fixed order of God. For convenience it may be called "the system of natural reason." Though apparently opposed, in reality these two schemes of ideas had much in common; perhaps they were

the obverse and reverse of the same thing. They were both theological, definite, positive, unchangeable.

But the adherents of these two systems were always in trouble. Those who expounded the fixed order of God were continually perplexed by the fact that the conduct of mankind did not conform exactly with the rules and regulations of the system. If they got much consolation from ascribing this nonconformity to perversity and sin, still the fact remained that the fixed order of God, especially after the Protestant revolt, seemed to be ferment, when tested by human conduct and actual institutions. Nor were the fixed-order-of-nature philosophers in any better case: human conduct simply would not conform with any purely numerical rules respecting pleasures and pains, profit and loss, gains and subtractions. Life, being organic, could not be entirely covered by reason, whether theological or scientific. Yet, on the whole, thinkers associated with feudal ranks were more inclined to the scholastic scheme of thought, while mercantile and capitalist thinkers turned rather to the fixed-order-of-nature map of affairs. About this there was not much mystery.

A third system of thought, opposed equally to the fixed order of God and the fixed order of nature, was a new philosophy which conceived of the world as endless change. Naturally this, too, took various forms. In the hands of the French theorist, Abbé de Saint-Pierre, it became the "idea of progress"—the continuous improvement of the lot of mankind on this earth by the attainment of knowledge and the subjugation of the material world to the welfare of the human race. This attitude was unknown to the Greeks and the Romans and foreign to the spirit and doctrines of early Christianity; but during the latter part of the eighteenth century and all through the nineteenth century, it spread far and wide in Western civilization. Condorcet's sketch of the progress of the human spirit appeared in a beautiful translation in Philadelphia soon after his death in 1795.

Taken up by the German philosopher Hegel, this notion of the world was worked out in an interpretation of history. With Hegel the truth is not a collection of ready-made dogmatic propositions respecting any fixed order, God's or nature's; it is in fact an endless chain of change—of becoming and passing—and this chain mirrored in the human brain is philosophy itself. But this everlasting flow of things, Hegel went on to say, is the progressive realization of the idea of God; underlying all the forms and changes of civilization is an infinite power realizing its aim in the "absolute rational design of the world. . . ."

The systems of thought which we have thus considered were, it is apparent, in the nature of explanations and justifications for particular sets of circumstances. The fixed order of God was satisfactory to the feudal landlord who wished his laborers to stay contented in the fields.

Bless the squire and his relations,
Live upon our daily rations,
And always know our proper stations,

ran the refrain put into the mouth of a peasant by a satirical writer of old days. The fixed order of nature, which forbade the state to interfere with economic affairs, was highly gratifying to businessmen who wished nothing more ardently than to be left alone to do as they pleased. Likewise the communist, socialist, or anarchist heaven promised to workingmen by various radical thinkers cheered up the gloom of poverty and seemed quite "just and natural" to those for whose benefit the scheme was presumably elaborated. Nor was the state socialism of the German economists less pleasing to the king of Prussia, his bureaucracy, and his supporting landlords. In short, all these patterns of thought look very much like "defense mechanisms," to use a term coined by modern psychologists.

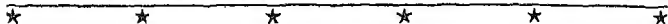
It would scarcely be too much to say that all the thinking

about human affairs that went on during the nineteenth century was fundamentally colored by one or more of these economic attitudes. Most of the thinkers were by origin or choice affiliated with one or the other of the several economic orders—with landed proprietors, capitalists, or working people. None of them were disembodied spirits viewing earthly affairs from the heights of “pure reason.”

Even into the “natural” science of Charles Darwin ran echoes of the social conflict. His father was of the middle class, a doctor, and his mother was the daughter of a manufacturer. His wife was of similar origins, and the leisure which he enjoyed was secured by a modest fortune prudently invested. He owed one of his fundamental ideas, perhaps the most fruitful, the idea of natural selection, to a political tract written to combat dangerous socialistic propaganda. To use his own words: “Having attended to the habits of animals and their relations to the surrounding conditions, I was able to realize the severe struggle for existence to which all organisms are subjected. . . . With my mind thus prepared I fortunately happened to read Malthus’s *Essay on Population*; and the idea of natural selection through the struggle for existence at once occurred to me.” And what was this *Essay* from which Darwin extracted this primary doctrine of his system? A scientific treatise written in a search for truth? On the contrary, it was a tract conceived in opposition to Godwin’s theories respecting a happy anarchist society; it was written to attack the idea of radical improvements in the lot of mankind. Its statistical and “scientific” garb was an afterthought.

Besides having its roots in the social conflicts raging in England, Darwinism served to convince the English economists that their doctrines were rooted in nature, had the unanswerable support of biology. Darwin found in the animal kingdom the same relentless “tooth-and-claw” struggle for survival which existed in the business world, thus

sanctioning the individualism of "sound political economy." The terrible fight of each against all and all against each was a law running throughout creation. Hence all socialistic efforts to soften this struggle were violations of inexorable rule, bound to fail, to do more harm than good. It is true that Karl Marx carried the materialism of the Darwinian theory over into his system of thought and used it to prove that all social institutions were mere products of material circumstances. But it was the economists of the laissez-faire school, rather than the socialists, who made the most effective use of Darwinism—against state interference with business enterprise. Taking the cue from this line of reasoning, certain of the anarchists demanded the abolition of state interference with property, that is, government protection of property, and proposed to have a genuine individualistic fight over the distribution of wealth, allowing the strongest and most cunning to reap the rewards of valor and virtue. Within a few years after the publication of Darwin's *Origin of Species* in 1859, his doctrines had spread to the utmost boundaries of thinking about human affairs. Not a few advocates of war saw in the conflict which broke out in 1914 and flamed around the world a vindication of the Darwinian hypothesis, a bloody struggle for existence, among the five great powers of nineteenth-century Europe, to which was soon added the new Leviathan of capitalism—the United States of America.



Chapter IV

The Rise of the Democratic Idea

ONE of the primary features of the American heritage which most of us believe ought to be defended and maintained is called "democracy." We believe that it is here, more or less, and that it ought to be here, perhaps that more of it ought to be here. Just what this idea of democracy is thus becomes an important theme of inquiry for us. In making the inquiry we find ourselves confronted by the necessity of another backward look into history.

According to a report in *The New York Times*, on February 2, 1937, Mussolini, the Italian dictator, shouted at a correspondent of that newspaper: "You make me impatient when you talk of democracy. . . . I tell you democracy is only a mask for capitalism, which clings desperately to the outmoded forms that allow it free play." If this were only a passing remark by the temperamental ruler of Italy, whose writings are strewn with confusions and contradictions, it would scarcely be worth a moment's notice. But the view he expressed has often been set forth by other observers of contemporary affairs—observers more thoughtful, more consistent, more informed. With the copious literature of the season before us, citations would be superfluous.

Is it true that democracy is only a mask for capitalism, that it contains no humane values forever defensible in themselves, that it offers no methods for the solution of

grave problems of state and for the continuous adjustments so necessary for social living? Surely no other question is more fundamental, more worthy of our consideration. It is not academic. Our lives and welfare hang upon the answer to be made and upon our willingness to defend and develop democratic institutions by every sacrifice of fortune and comfort that may be required.

The answer to this question is not to be found in the fogs of metaphysical and dialectic debate. It lies written in the history of the centuries and in the plain experiences of the hour. Whoever runs and reads may find it in the papers and documents that record the past and in the practices of legislatures, executives, and courts now open to general observation.

Capitalism and the Democratic Idea

Is democracy merely a mask for capitalism? Is it true that capitalists originally conceived the idea of democracy in Western civilization, that they first put it forward in America, that they championed it, fought for it, and embodied it in constitutions and institutions—all for the purpose of providing a mask for their system? If it is true, then the records of history should disclose the fact. What do the records reveal?

At the outset two preliminary definitions are necessary, unless we are to grope in the dark. If by capitalism is meant the mere private ownership of land and other instruments of production, then capitalism is far older than anything that may be correctly called democracy and has existed under many forms of government. But capitalism is not to be identified with private property as such; nor is it one and the same thing in all times and places. It is only to be identified with the use of property for the prime purpose of making profits out of it, as distinguished from the application of property in securing a living. Moreover, capitalism is a mat-

ter of origins, growth, degree, and change. Certainly in the Middle Ages, the great majority of the people and the major part of the instruments of production were employed in the production of commodities for use, not for the profit of the owners in any exact sense of the term "profit."

As we have seen, it was only during three centuries of change that the production of wealth for profit became what may be called a major concern of economy in Western nations. It is fairly accurate to say that the real triumph of capitalism in Western civilization came in the closing decades of the nineteenth century, just as social democracy challenged its theory and practice. In such human matters the exactness of mathematics and physics cannot be attained, but the weight of historical evidence supports this broad conclusion. If an arbitrary date must be chosen we may venture the judgment that capitalism did not become the dominant mode of production in the United States until after 1865, the year that marked the downfall of the planting class.

Now let us define democracy provisionally as a government resting on a popular base and controlled directly or indirectly by all adults without distinction of property. Certainly that is a justifiable definition in the political sense of the term.

Here too we find matters of growth and degree. The steps by which this system of government was approximated may be traced in the records of history as positively as the story of the earth may be read in the findings of geology.

Historic Demands of Democracy

Leaving antiquity and the Middle Ages out of account, we may open the record of democracy in England in the seventeenth century. There were rumblings and grumbings long before that period, but it is in the seventeenth century

that we encounter on a large scale systematic demands for "natural rights" and for the right of all men to share equally in government. Were these demands put forward, approved, or fought for by the property owners and incipient capitalists of that century?

The record is plain. They were not. These demands were advanced by obscure and humble persons called "levelers" and thoroughly despised by the possessing classes of the time. The system of political democracy was attained in England by repeated struggles extending over three centuries, culminating in the suffrage acts of our own day. In these struggles we do not find either capitalists or landlords as a class looking with favor on universal suffrage. They were ready to demand the ballot for themselves, but their philanthropy was limited. Individual capitalists and landlords, sometimes for the purposes of partisan triumph, aided in the movement. But to say that the capitalist owners of property gave the vote to the propertyless for the sake of protecting property—as a mask for capitalism—is simply to falsify the facts of English history.

The generalization applies also to American history. The property owners who voted under the British system in colonial times did not give the ballot to all the propertyless when they threw off the British yoke in 1776. On the contrary the first state constitutions adopted after the Revolution continued generally certain property qualifications on voting and office holding, for the clear purpose of keeping government in the hands of property. It was only through innumerable local struggles that the suffrage was widened to include substantially all the adult white males. That result was practically, but not completely, achieved by 1835, years before the triumph of capitalism in the United States.

And who led in these struggles to democratize American government? Did capitalists as a class originate them, approve them, and carry them to triumph, all for the simple

purpose of providing a mask for capitalism? Here, too, the records of American history are clear. In the main the movement for democracy in America received its impetus from mechanics, industrial workers, and farmers, who can scarcely be called capitalists by any stretch of the imagination. Leaders in this suffrage battle, men and women alike, derived instruction and inspiration from the logic of the Declaration of Independence. They received some aid and comfort from individuals who may be called capitalists, but the establishment of democracy in the United States was not the work of capitalists.

Apart from the cold historical facts, a glance at the theory makes it absurd on its face. Property owners and capitalists, it maintains, turned the government over to the propertyless majority for the sake of protecting their property, of providing a mask for capitalism! Common-sense logic makes the idea preposterous, while the facts of history demonstrate its falsity. The rise of capitalism coincided with the rise of democracy, and in some respects facilitated its growth; but capitalism did not originate the democratic idea, deliberately promote the realization of the idea, or welcome its triumph. All through the long historical process spokesmen of great wealth warned the members of their class that democracy was incompatible with the prevailing concentration of property. If outstanding examples need be cited, Lord Macaulay and Daniel Webster may be chosen to illustrate the proposition.

The Essence of Democracy

No, the rise of democracy represented a movement of humane forces deeper than capitalism, deeper than the accumulation of profits. Yet the idea of democracy has never been entirely dissociated from the forms and distribution of wealth. Thomas Jefferson did not choose the label "democrat" for himself or the party he founded, but he may be

called, with some justification, the leading promoter of the democratic idea in the early days of the American republic. And Jefferson associated popular government with a wide distribution of property. He believed that the true basis of such a government was an agricultural population, composed of freeholders and their families—not capitalists, but tillers of the soil who looked to the labor of their own hands for their sustenance and thus possessed liberty and independence. Jefferson thought that the safety of the republic was assured as long as there was an abundance of land for occupation, and that when Americans were piled upon one another in cities they would start eating one another up, as in Europe. This is what President Franklin D. Roosevelt must have meant when he quoted the old saying that *necessitous men are not free men*.

So today American democracy, in seeking to preserve its institutions, does not offer itself as a mere foil or mask for capitalism. On the contrary, it inquires into the present concentration of wealth, enacts legislation against the methods by which concentration is effected, and demands legislation, institutions, and practices by which a wider distribution of wealth may be effected and security of economic life guaranteed to all. To be sure, enlightened capitalists recognize the justice and necessity of such demands, but it cannot be truly said that the center of gravity of American capitalism is on the side of this emphasis in contemporary democracy. Anyone who thinks that democracy in the United States is a mere tool of raw capitalism, as it has generally been conceived and practiced, is suffering from an illusion, is blind to the stubborn realities before us.

No less significant for humanity than the democratic ideal and its economic aspects is the *method* which democracy offers for making the political and economic adjustments required by changes in the production of wealth, the advance of knowledge, and the eternal urge of the human spirit.

Democracy proclaims that these changes are to be effected by the processes of inquiry, discussion, deliberation, popular decision, and continuous appraisal of results. It offers a way of enlightenment and peace under rules of law, and thus stands in eternal contradiction to governments created by force, maintained by force, and unchangeable save by force. It asserts for the human mind freedom of inquiry, without which knowledge cannot be advanced. It upholds freedom of the press and communications, without which intelligence is crippled and discussion is a sham and a farce. It throws about the individual the protection of civil tribunals and processes of law, against the sheer manifestations of brute force. It allows no leader hoisted into power by force to imprison or shoot down thousands of citizens without trial, without a hearing, without the right to have the truth sifted by witnesses and judicial scrutiny.

Now these institutions of democracy are no mere mask for capitalism. Their origins antedate the rise and triumph of capitalism in Western civilization. The improvement of these institutions has not been the mere work of capitalists. On the contrary, for more than three hundred years men and women have sacrificed life and property to secure the establishment of democratic institutions and to make more just and effective their functioning. Unquestionably, the law and custom of democracy are as yet far from perfect; in practice ignorance and bigotry pervert their purposes; and their principles are often violated. Yet with all their shortcomings, delays, and confusions duly admitted, the ideals and achievements of these institutions stand in flat and eternal contrast to the institutions and practices of governments founded on sheer force.

The very substance of all discussion under this head turns upon the relation of government to change. Certainly the very essence of history is change. Men and women die. New generations arise. The sickle of time cuts down dictators as

well as their victims. Ideas appear and exfoliate. Material and spiritual interests alter. Old values are discarded. New values are created and cherished. Neither Hitler nor Mussolini nor Stalin is immortal. No government is fireproof against change. If confirmation be sought, look at the wrecks of states, empires, kingdoms, principalities, dictatorships scattered along the path of more than seventy centuries. Those that do not bend, adjust, or adapt surely perish. Even despotisms are tempered by assassination.

All despotisms, under whatever name they masquerade, are efforts to freeze history, to stop change, to solidify the human spirit. There is only one way by which a despotism can be altered, that is by revolution, by the kind of violence employed in its establishment. Such governments may last for many years. Cromwell created one; it passed. Napoleon I established one; it passed. Napoleon III established one; it passed. Diaz established one; it lasted longer than Napoleon I's, but it, too, passed. It may be that none of us will live to see the passing of the new dictators now preening themselves for their brief period on the earthly stage. But history is merciless. The more they strut, the more they proclaim the eternity of their systems, the more certain we may be of their decay and doom. If there is not a Brutus for every Caesar, there is an old man lying in wait for him—the old man who carries a scythe and an hour glass.

The institutions of democracy, on the other hand, provide for change and depend not upon the life of any person or self-constituted group of persons. They do not form a closed system of economy or culture. They are devised to cope with the rise, flow, and alteration of social and economic systems, with the creation, modification, and adaptation of systems. They rest upon human ideals, interests, and judgments more eternal than systems. They do not deny the role of leadership in history; they provide for leadership and its functioning. They do not prevent masses of people from rallying

around leaders and great achievements; they are designed to facilitate this process through discussion, deliberation, and matured decision.

All this the founders of the American republic understood. They were familiar with the history of despotism in the Old World. Between 1780 and 1787 hundreds of Americans believed a republic impossible and popular government of any kind a delusion. In 1782 a colonel in the American army wrote to General George Washington: "The war must have shown to all, but to military men in particular, the weakness of republics." He then proposed that an immense territory be set apart as a distinct state to be governed under such a mode as the military men who moved to it might decide upon. In reply to this letter, Washington wrote a stinging rebuke which will stand forever among the landmarks in the history of American institutions.

No, the founders of popular government in the United States and the leaders among the men and women who have sought to extend democracy in every direction have not been ignorant of history, of the nature and fate of despotisms and dictatorships. Nor have they been unaware of the difficulties, risks, and perils of self-government. After independence was declared the way was opened for a military dictatorship and there were many who would have walked therein; but that choice was deliberately rejected and the other course was deliberately taken. With these traditions and these instructions embedded in the very substance of their civilization, Americans may be pardoned for refusing to take at face value the old maxims of new upstarts, and for renewing their determination to preserve the democratic processes of government. In so doing they need not undertake to give Europe or the Orient any gratuitous lessons, save in so far as tending their own garden may be deemed instructive.



Chapter V

Essentials of the American System

AFTER an inquiry into our historical heritage, including the rise and growth of the democratic idea, it is appropriate that, in seeking a comprehensive view of our present situation, we try to get at the fundamental character of democracy, or, more properly speaking, the American system of government and polity. In a practical way this means trying to pick out those features of our system which are deemed essential, indispensable to its genius and its existence. The task is difficult. It must be undertaken, however, if we are to have a clear idea of what we are talking about when we speak of democracy or the American system.

Never by solemn convention assembled has this nation proclaimed itself a democracy. Nowhere in law or decree is presented for our instruction a summary of the ideas and practices deemed essential components of democracy. The word is not found in the Declaration of Independence. Nor does it appear in the Constitution of the United States.

In the early days of the nation, the term "democracy," when used, was generally applied to direct popular rule in small communities, such as the city-states of antiquity; and by a study of history leaders among the founders of our republic reached the conclusion that this type of government led inexorably to tumults, to attacks on persons and properties, and finally to the triumph of despotism. Scarcely less

did they fear indirect popular rule through the representative assemblies of the American states, and especially the possibilities of full manhood suffrage. "Give the votes to the people who have no property," exclaimed Gouverneur Morris in the Constitutional Convention of 1787, "and they will sell them to the rich who will be able to buy them." Broadly speaking, these founders of the republic were as much alarmed by the specter of democracy in either form, direct or representative, as they were by the menace of monarchy or the dictatorial propensities of a military caste or of a plutocracy.

Only by slow and halting processes have Americans arrived at the application of the word "democracy" to the government and society of the United States. Nothing like official sanction was given to this usage until 1917, when President Wilson declared that the war on the Central Powers of Europe was a war for democracy. Even now, amid all the florid eloquence about it, the term has no seal of national resolve, and awaits both comprehensive statement and formal adoption.

The Elements of Democracy

Whence came the idea of democracy, so vaunted and so celebrated in our day? For an answer we must search; and our search carries us far back in time; beyond the Declaration of Independence into colonial and English history; beyond England to the Continent of Europe, through the Protestant Reformation, the Renaissance and medieval civilization; beyond the Christian doctrine of universal brotherhood, through the natural law of the Romans, to the social ideals of the Stoics; far beyond Stoicism into the very origins of primitive society, with man as the hunter and fighter and woman as the mother, originator of domestic arts, conservator of the humane spirit in mutual aid. And when we

scan the horizon of the future, contemplate the coming fortunes of democracy, we find ourselves caught in the toils of this historical sweep. If we are bold enough and insistent enough, our search will carry us into a consideration of the nature of all things human—the ultimate design of the universe.

When, however, we concentrate our thought upon experience in the United States, we find six enduring elements now intertwined under the prevalent conception of democracy: popular government within a span of time, efficiency in function, sustaining economy, civil liberty, appropriate education, and the spirit of humanity and enlightenment which lifts men and women above the beasts of the field and confers upon them moral rights and social duties. These six elements are closely related, are aspects of the same thing, are inseparable parts of the whole. The neglect or failure of one imperils the fortunes of all. Any conception of democracy in America less comprehensive would not correspond to irreducible facts in the case.

It is true that democracy is often defined narrowly as the "form of government in which the sovereign power resides in the people as a whole and is exercised either directly by them . . . or by officers elected by them." But this definition is both exclusive and superficial. It fails to specify the concrete practices necessarily associated with the exercise of popular sovereignty in a span of time. Under this definition the despotism of Napoleon III might be called a democracy, for his elevation as emperor was approved by a popular vote of adult males, by a majority of ten to one. The definition omits all reference to society, in which every form of government must operate. In other words, it leaves out of account specific conditions of life and economy indispensable to the existence and functioning of democracy. It disregards the eternal oppositions of power and life, authority and liberty, public spirit and private interest, brute force and humanity,

with which the institutions of democracy must cope if they are to endure.

Both in conception and practice popular government in the United States transcends any superficial definition of form at a given moment. It is democratic in the sense that all high public authorities endowed with political power over lives and properties are chosen directly or indirectly by popular vote and that, in the long run, the sustained and matured will of the duly constituted majority is allowed to prevail. Here popular sovereignty and the time span are combined.

Under this system, no mere majority of men and women at any momentary election of public authorities or in any given legislative assembly can immediately compel the enactment and enforcement of any law they are pleased to demand amid the heats and tumults of a single campaign. If such immediacy is an essential element of democracy, then America has never been and is not now a democracy.

Only in limited matters do simple majorities or pluralities control the decisions and actions of government. In all sovereign matters, as the Constitution of the United States prescribes, extraordinary majorities are required and a due process calling for an extension of actions in time must be followed. In no sovereign matter does the snap judgment of a majority or a plurality given at a mere moment have the force of law. Our system, in respect of great issues, allows for the time element and guarantees that prudence and daring, conservatism and radicalism, may each have its days in court, that discussion and education may intervene, that pleas and counterpleas may be heard, and that decision may be matured.

The Popular Will

The declaration of popular will, even if matured, is only the beginning of democratic government. Government in

action is function, the discharge of concrete duties. Government in action deals with issues of finance, economy, health, utilities, conservation of resources, human relations, national defense, foreign affairs, and the general welfare broadly and realistically conceived. If it is to endure, government must grapple with these issues competently, efficiently. Is popular government a guarantee that a democratic government can and will display this competence, this efficiency? If it were, then surely the elected parliaments of so many nations would not have vanished in our own time. Unless the agencies of popular will can legislate appropriately and administer efficiently, then democratic devices will perish, no matter what oceans of ink are spilt and what flowers of eloquence bloom in their defense. In ancient Rome men mouthed the grand phrase *Senatus Populusque Romanus* long after the assembly had degenerated into a farce and the Senate had become the home of gibbering ghosts. The wrecks of monarchies, tyrannies, aristocracies, dictatorships, and democracies scattered through fifty centuries are solemn demonstrations that varied forms of government have failed at their tasks, in the discharge of their functions, under their symbols, in their times and places.

Efficiency in Function

When, therefore, the test of efficiency is applied to democracy in the United States, an inescapable question arises: Is popular government, as now constituted, really competent to deal effectively with the general functions common to all governments, and more especially with the specific issues forced upon this government by giant technology, by the power of enormous private corporations, by huge urban aggregations unlike the cities of earlier times, by organized labor, by the decline in freehold agriculture, by periodic crises in economy, by the complications of international

rivalries? Here is a question of the hour which challenges all talents and powers. Can popular government come to grips with these issues, overcome them, and efficiently administer its decisions?

Already in our smaller laboratories of popular experimentation—cities and states—has appeared a profound conviction that many of our inherited institutions are not adapted to the requirements of the age, are in fact inefficient. In all our great cities the double-chamber council has been abolished, a single chamber installed, and the mayor endowed with broad powers in his own right. In 650 cities the mayor-and-council system has been discarded and the city-manager plan substituted for it. In a majority of the states the inherited scheme of administration has recently been abrogated, in whole or in part, and the power of the governor over finance and the conduct of public business has been materially increased. In several states an attack has been made on the weaknesses of legislatures, and a legislative council has been instituted for the purpose of concentrating research, knowledge, and imagination on public questions. More and more, the technical literature of competence in the field of state and local government is filled with doubt, inquiry, and a searching for constructive proposals.

This quest for efficiency in government extends to national affairs. Already critics are saying that in the Congress of the United States a zeal for spending borrowed money, placating special interests, and framing bills against dissident minorities outruns the capacity to concentrate powers of mind upon the supreme issues of the time. Already critics are saying that democracy cannot really act effectively in great matters, that party bickerings defeat the preparation, discussion, enactment, and administration of measures necessary to evoke creative energies, allay alarms, and bring our moral, industrial, and natural resources into wise and full use.

In allowing some validity to these criticisms no aid and

comfort need be given to the carping censors who fondly imagine that they can set the clock back to 1928 or 1898, or any other year in the past and thus find instantaneous solutions of our pressing problems of efficiency in government. Most of the measures now urged upon the federal administration by its detractors are the identical measures which were in full effect during the regime of golden prosperity, so called, which exploded with such devastating force in 1929. Why repeat the very origins of our present calamity? Both experience and reason suggest that the search for efficiency in government be turned to the invention of new devices for concentrating talents and wills on needs now clearly before us. The recitation of old phrases by a thousand specialists in propaganda will only add to the nation's confusion and delay the application of its abilities and energies to the attainment of efficiency in government.

A Sustaining Economy

Bound up with popular government and its functioning is the economy of the people who are supposed to control the form and process. Nothing is truer than the old adage: An empty meal sack cannot stand up. All governments have economic foundations. This axiom of politics does not come from armchair philosophers or demagogues or agitators. It comes from the founders of the nation, builders of our institutions, from leaders of large vision, wide experience, and demonstrated capacity in great affairs. They made a revolution, waged a continental war for independence, offered their lives and property in defense of their cause, established a republic, and steered it through perilous times. As against the weight of their authority and achievement, the axioms of private men pursuing private interests and of all petty phrasemakers in public affairs are as dust in the balance. Let those speak whose public accomplishments display the

depth of their insight, the precision of their knowledge, the prowess of their minds, the invincibility of their courage.

In words that admit of no equivocation these great of old who instruct us from their tombs declare that politics and economics are forever united. Ringing through their utterances like the tones of a clear bell is the warning thesis: A wide diffusion of property and a general equality of condition are the very foundation stones of popular government; a high concentration of wealth is incompatible with universal suffrage; a broad distribution of opportunity and assurance to labor is necessary to the security of republican institutions; the revolutions which have shaken other societies to pieces have sprung from the antagonism of private accumulations and popular power, fired by ambitious leaders. These findings, wrought out of hard experience, are set forth in many places by American statesmen of early times—nowhere more trenchantly than in the writings of James Madison, justly called the Father of the Constitution.

Near the close of his long life, in the winter of 1829-30, Madison reviewed his rich experience and sought to lift the veil upon the future of his country. He prophesied that in 1930 the population of the United States would probably be 192,000,000 and that a majority of the people would be "without property or the hope of acquiring it." Then he asked: "What is to be done with this unfavored class of the community?"

Madison confessed that he was unable to answer his own question. He thought that it would be unsafe to "admit them to a full share of political power." At the same time he declared that "it cannot be expedient to rest a republican government on a portion of the society having a numerical and physical force excluded from, and liable to be turned against it." This exclusion of whole masses from a share in government, Madison believed, "would lead to a standing military force, dangerous to all parties and to liberty itself." In this

fateful conjuncture of things, the Father of the Constitution saw the crucial test of popular government.

Having arrived at the dilemma, Madison concluded: "How far this view of the subject will be affected by the republican laws of descent and distribution, in equalizing the property of the citizens . . . cannot be inferred from any direct and adequate experiment." But he foresaw the necessity of great alterations in public policy to meet the exigencies which he had predicted. "To the effect of these changes, intellectual, moral, and social," he said, "the institutions and laws of the country must be adapted; and it will require for the task all the wisdom of the wisest patriots."

Although Madison overestimated the population of 1930, he did with amazing vision forecast the primary features of the economic scene as they appeared one hundred years later, in 1930. The proportion of farmers who were tenants had increased rapidly until it was more than 40 per cent of the total number; and at least one third of the nominal owners were heavily burdened by debts. In the great cities the major portion of the inhabitants were without property worthy of mention, if not entirely without hope of acquiring it. About ten million workers were unemployed and losing faith in the possibilities of employment. There had been grand gestures in the direction of economic security, but grave doubts were entertained respecting the underlying strength of that assurance. Our economic machine, on which all the people rely for sustenance and the government depends for its very existence, rumbled along in uncertainty at about one half of its full capacity—until the armament boom of 1941 gave it a temporary lift.

Such are the axioms of experienced statesmen. Such are glaring economic facts of our present situation. The crisis in national life forecast long ago has arrived. This is the age in which the wisdom of the wisest patriots, as Madison warned us, is required for the resolution of the dilemma. Not

curtailment but expansion of production is now a primary need of American democracy. Our output of wealth must be materially increased and there must be a distribution of employments, goods, and services wide enough to afford those opportunities and assurances upon which popular government rests and must ever rest. If the wisdom is lacking, force may be offered as a substitute. Nay, if history is any guide, force will be offered and democracy may be started spinning swiftly on a downward spiral.

In the light of this imperative, the policy of reduction applied generally to agriculture, however defensible as a temporary expedient in respect of certain commodities, is, in the long run, a peril to the economy of a democratic society. No less perilous is the apparent inability of leadership in business enterprise to prevent those periodical curtailments of production in industry which harrow the hearts of men and women with fear and despair. No less perilous is the apparent inability of that leadership to force or guarantee the expansion of industrial production toward the very borders of the capacity indicated by our plants, skills, and resources. Nor is the strife of organized labor over the crumbs that fall from a diminishing table any contribution to bringing about the economic arrangements necessary to the perpetuity of democratic institutions.

If we are to learn from the instructions bequeathed to us by the founders and builders of this republic, it is idle gossip to speak of the long-term promise of democracy unless these essential factors of wealth production—government, industrial management, agriculture, and labor—can put aside their outworn formulas, rise to the occasion as did the creators of the republic, unite upon methods and measures that will expand production, enlarge and steady the domestic market, and assure the wide distribution of employment, goods, and services essential to the stability and progress of a democratic society.

Civil Liberties

But at a given moment government may be popular in form, efficient in administration, competent to provide the conditions necessary for a wide economic security, and yet by its conduct of affairs undermine those civil liberties upon which democracy depends for its long-run existence. It may destroy that freedom which brings knowledge and wisdom to bear upon its operations, supplies criticism, and furnishes constructive thought for new occasions and measures. In operation popular government is government by public opinion and decision, enlightened by discussions that permit all causes and parties to be duly heard, even those hateful to the majority. Without freedom of press, speech, and person from arbitrary power, popular election becomes a farce, government a tyranny, and administration an agency of personal vengeance.

Hence indispensable to the functioning of a democratic system on its own principles are those constitutional safeguards which place restraints upon the regular operations of majorities and upon the irregular insolence of mobs: safeguards against press censorship, against interference with free speech, against arbitrary arrest, against secret trial and condemnation; safeguards against the enactment of ex post facto laws making crimes out of actions that are not crimes when committed; safeguards against depriving persons of life, liberty, and property without due process of law, against cruel and unusual punishments, against the suspension of the writ of habeas corpus, against the introduction of martial law, against assaults upon the whole structure of civil rights so painfully built up through centuries of conflict and sacrifice. To permit the suppression of civil liberties by public agencies or private mobs is to cut away the intellectual foundations on which popular government rests in the long run, and to open the way for government by proscription

and the firing squad, perhaps in the very name of the people.

It is not enough that the maxims of civil liberty be spread upon paper and celebrated by sunshine patriots. They are futile unless made dynamic in government itself. They are mere trash unless supported by citizens in daily conduct. Again and again they have been flouted by the Congress of the United States, by state legislatures, by prosecuting attorneys, by judges sworn to administer justice under law, and by lawless crowds of rich and poor.

Indeed so flagrant have been violations in recent years that the danger has become obvious even to careless and indifferent citizens, and a countermovement has been well launched. Defenders of liberty have come to its support. The Supreme Court, long heedless, has at length spoken out clearly and strongly against infractions. Once negligent, indeed apparently hostile, the American Bar Association has at last recovered the grand tradition of Erskine and Mackintosh, established a powerful committee on civil liberty, and offered aid and counsel in the trial of causes involving personal rights. But more is needed: systematic instruction in the subject by the public schools and a deep-rooted respect for the tolerances of civil liberty among the people in whose hands rests the fate of their own government.

Education

In connection with the functioning of democracy, in its public and private aspects, education may point the way upward or downward. It may prepare the people for the fulfillment of a great mission or for subjection to sheer force. If education is to be effective in strengthening all phases of democracy, it must be appropriate to the exigencies of American civilization. While it has a precious heritage to guard, education has a duty to assemble and diffuse the knowledge required by citizens and their leaders in operating popular

institutions, in making them effective in every sphere, and in preserving civil liberties.

No longer can education proceed safely on the assumption that by training youth for the successful pursuit of private interests it will automatically insure the general welfare and the perpetuity of democracy. Like other alluring illusions, that is highly dangerous. It is even now too widely cherished. Other conceptions of purpose and action are needed to counterbalance it. Only by a program of instruction that deals resolutely and realistically with the processes of democracy, with questions of sustaining economy and culture, and with the protection of civil rights can American education "defy powers that seem omnipotent" and span the full measure of its opportunity.

The Spirit of Democracy

Universal suffrage, efficient government, material foundations, declarations of rights, and education alone cannot guarantee the safety of our civilization against the storms of passion and the lust of men for power. Behind all beneficent institutions of society, ever helping to sustain them, is that elusive but potent force known as the humane spirit. This spirit has ever been affiliated with, and expressed in, the noblest philosophies that have commanded the allegiance of hearts and minds since the beginnings of society. It has been associated with all great religions. Trampled upon by power, crushed by the organization of interests, the humane spirit endures in many forms, under varied professions of faith, and offers the strength of justice and mercy against the effronteries of tyranny and the angers of brute destruction. Without it even democratic government is an empty shell—a numerical counting of heads that may be farcical in procedure and cruel in outcome.

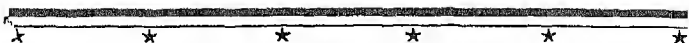
If our powers are to be effectively applied in sustaining the

forms and achieving the ends of popular government, this humane spirit must be cherished and quickened, and ever brought to bear as a dynamic element in the enrichment of life. Knowledge is not enough. Science is not enough. Both may be employed to kill as well as to heal. Accumulated facts, though high as mountains, give us no instruction in human values and the choices of application. It is the humane spirit that points the way to the good life. To reiterate the maxims of this spirit, to restate them in terms of new times, to spread them through education and daily intercourse, to exemplify them in private conduct, to incorporate them in public practice, to cling to them despite our infirmities and hypocrisies—this, too, is a task of all who fain would make government by the people and for the people endure upon the earth.

Such are the components of American democracy—all essential to its perpetuity and development. They are not figments of an imagination, fashioned in a philosopher's alcove. They are realities of experience, tried and tested in the fires of centuries. Such, too, are the challenges of dissolution and sheer might which threaten the existence and unfolding of all that is best in this democracy. These are the central points for our consideration; here is the conflict that engages our contemplation.

Facing this antithesis, nay, caught in the turmoil of these contending forces, it will not do for us, as Carlyle warned America long ago, to sit idly caucusing and ballot-boxing upon the graves of our ancestors, saying "It is well, it is well." Rather is it for us to look with clear eyes upon the welter before us, to curb our little hates and loves, to forget our trivial slogans and party distempers, to clarify and purify our hearts and minds, to discover or invent, by concerted effort, the best means for coping now with the central issues raised amid indubitable facts. It is for us to find the common denominators of a union necessary to success in applying the

conclusions of our search, and, equipped with all the strong instruments of civilization, march upon the goal we have set before us, remembering that those who labor in so great a cause labor in a cause worthy of the finest and noblest talents.



Chapter VI

The Constitution as a System of Power

THE essence of government is power. A government which cannot enforce its laws and maintain order is, or soon will be, no government at all. The essence of constitutional government is *limited* government—power, subject to restraints in behalf of personal liberty and restraints as to methods of procedure. These facts the framers of the Constitution recognized. In this chapter we are to consider the side of power.

Many pages have been written on the disputes among the framers and on their "compromises." They did have disputes and they did make compromises; but there was general agreement, if not unanimity among them, on the proposition that the new government, however framed, should have an amplitude of powers necessary to the exigencies of the Union. These powers are set forth in the Constitution in express and general terms.

In one respect the history of the Constitution is a history of disputes over the extent and nature of these powers, express and general. During the disputes two theories have been evolved. The first is the broad interpretation which makes these powers adequate to the exigencies of each succeeding age and all the crises through which the country may pass. The second is the narrow interpretation which seeks to restrict and confine these powers within the narrowest

limits, sometimes to the mere power of conducting foreign affairs, defending the country, and keeping order.

Frequently it is said that the Republican party has adhered to the broad interpretation and the Democratic party to the strict interpretation. This is not true in fact. Leaders of each party have been broad in interpretation in one set of circumstances and narrow in another set of circumstances, usually as their conception of their interests varies.

Which is the correct view of the Constitution and how can the truth be ascertained? That certainly is a fundamental question in political science.

At the outset this basic proposition must be considered: Early theories about the broad or narrow construction were, as a rule, based on little actual knowledge of what the framers did intend; these theories were mixed up with party passions and became fixed features of party traditions before the publication in the year 1840 of Madison's notes on the secret debates of the convention.

In other words, since the convention met behind closed doors and only fragmentary knowledge of its intentions was made public prior to 1840, the political leaders who talked about broad and narrow interpretations until that year as a rule knew little about the purposes of the men who made the Constitution. The exceptions to this rule were the men, such as Hamilton, Madison, and Washington, who had been members of the convention and had heard the debates.

From Madison's notes on the debates in the convention, from the journal, from letters and papers of the members of the convention, it is now possible to answer, on the basis of knowledge, the question: Did the framers intend to confer upon the federal government broad and general powers adequate to the exigencies of government?

The Purposes of the Framers

The first item to be especially noted as bearing on the answer is the resolution of the Congress under the Articles of Confederation calling the Constitutional Convention of 1787. The fundamental and express purpose of this action was to "render the federal constitution adequate to the exigencies of government and the preservation of the Union." The new instrument to be drawn up at Philadelphia was to be made adequate to the exigencies of government. The convention was instructed to do more than compile a list of new powers to be conferred upon the old confederate government.

The second item in the record is a resolution adopted by the convention setting forth its convictions and intentions with respect to the powers to be conferred on Congress. On May 29, the very first day after the organization of the convention had been completed, Randolph of Virginia presented a general plan which contained this resolution. On May 31, it was approved and spread upon the record as a controlling principle. Later, on July 17, it was made still stronger by an amendment which was adopted after a few minutes' debate. The resolution in question reads:

That the legislature of the United States ought to possess the legislative rights vested in Congress by the Confederation; and moreover to legislate in all cases for the general interests of the Union, and also in those cases to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

It is evident from this resolution that the convention intended to confer upon Congress a broad power to legislate "in all cases for the general interests of the Union."

Along with other provisions, this particular resolution was referred by the convention to "the Committee of Detail"

with instructions to formulate a draft of the new constitution for further consideration. In other words, when the committee began to draw up the section conferring powers on Congress, it had before it this command, this declaration of purpose, as a guide and mandate in the elaboration of details. The convention was the principal; the Committee of Detail was the agent.

Now the Committee of Detail consisted of five delegates, all of whom took the broad view of the work in hand and expressed, in one form or another, the firm conviction that the new constitution should be adequate to the exigencies of government. In other words, they were men in complete sympathy with the declared purpose of the Convention and not at all inclined to thwart or defeat it.

For about two weeks the Committee of Detail worked on the draft of the Constitution, and on August 6 they presented it to the convention for debate, amendment, and adoption. The section dealing with the powers of Congress contained a list of so-called specific powers, and closed with the general provision giving Congress the power "to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof."

Although the paragraphs of the section dealing with "specific powers" were altered in some respects, this paragraph was adopted with a single change: "that" was altered to read "which."

In the light of the resolution previously adopted by the convention instructing the Committee of Detail, given the known views of the members of that committee, can there be any doubt that the convention intended to confer upon Congress a broad and general power "to legislate in all cases for the general interests of the Union"? Certainly the convention did not confine the Constitution to a mere enumeration

of specific powers. In connection with this indisputable record, the "necessary and proper" clause takes on positive meaning, and Chief Justice Marshall had good and sufficient warrant for giving it the broad interpretation.

The General Welfare Clause

After the Committee of Detail reported its draft, there was evidently some dissatisfaction in the convention with the section conferring powers on Congress. On August 18 Madison proposed the addition of several specific and general powers, and his resolutions were referred to the Committee of Detail. Four days later the committee reported back to the convention a number of propositions, including a clause, to be added to the list of powers conferred on Congress, authorizing it to provide for "the well managing and security of the common property and general interests and welfare of the United States," in such a manner as not to interfere with the internal police of the states or matters for which their authorities may be competent.

This resolution, however, was not adopted. But on September 4, a special committee of the convention, to which sundry resolutions had been referred, reported an addition to the paragraph conferring taxing powers on Congress. It read: "to pay the debts and provide for the common defence and general welfare of the United States." This addition was adopted and incorporated in the Constitution.

In the final draft of the Constitution reported by the Committee of Style, there were two important additions, among many others, to the draft reported by the Committee of Detail on August 6. The first was the preamble declaring the purpose "to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. . . ."

The second was the general welfare clause attached to the taxing power. In the printed draft, which the members of the Convention had before them, it stood: "To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States." After a few minor amendments were made in this printed draft, the whole was engrossed for final adoption and signing. In the engrossed draft the semicolon between the words "excises" and "to pay" was omitted and a comma substituted by the copyist.

This matter of punctuation may seem trivial but it is important, and wordy debates have turned on it. The point is not only significant in itself, but it illustrates the pitfalls in the way of those who think they *know* what the Constitution really is.

On the ground that there is a semicolon in the printed draft which the members read, it has been argued that the convention conferred upon Congress a broad power to provide for the general welfare. (See speech of Hon. David J. Lewis in the House of Representatives, August 20, 1935.)

Assuming that the comma, not the semicolon, represents the intention of the convention, because it appears in the engrossed document read to the members, commentators on the Constitution have argued that the general welfare clause merely limits the taxing power. So the whole paragraph should be understood to mean that Congress, in laying taxes, duties, imposts, and excises, is limited, in this power, to paying the debts and providing for the common defense and general welfare. In fact, other records of the convention may be cited to support this contention.

But assuming that it was the intention of the framers so to limit the taxing power of Congress, it must be admitted that the general welfare clause is there in the Constitution, and that, if it is a limitation in respect of the purposes of taxation, it is a broad and general limitation. In laying taxes

Congress is bound by the rule that, in taxing and spending money, it cannot go beyond paying the debts and providing for the common defense and general welfare. Accepting this interpretation as valid, then in exercising its taxing and spending powers Congress may do anything that is consistent with the general welfare.

Taken in connection with the convention's resolution avowing the intention of conferring on Congress power to legislate "in the general interests," both the necessary and proper clause and the general welfare clause must be construed broadly. At all events, this construction is binding on all commentators and practitioners who are faithful to the letter and spirit of the entire record. The conclusion is not altered even if the welfare clause be regarded as a "limitation" on the taxing power of Congress.

Alexander Hamilton's Interpretation

This view of the Constitution drawn from the records of the convention is supported by Alexander Hamilton in his opinion for President Washington on the constitutionality of the first United States bank. He made extensive use of the "necessary and proper" clause, as well as of specific provisions. He said squarely: "The degree in which a measure [of Congress] is necessary can never be a test of the legal right to adopt it; that must be a matter of opinion, and can only be a test of expediency." In other words, the necessity and propriety of a measure designed to carry into effect enumerated powers are matters of opinion, of expediency, and are not matters of legal exactness.

Having interpreted the "necessary and proper" clause broadly, and in keeping with the records of the convention of which he had been a member, Hamilton then turned to the welfare clause. In a brief for President Washington, Thomas Jefferson had argued against the constitutionality

of the bank and had contended that Congress could not tax for any purpose it pleased, but was limited to paying debts and providing for the common defense and general welfare. This contention Hamilton considered in the following argument:

It is true [he said] that they [Congress] cannot, without breach of trust, lay taxes for any other purpose than the general welfare; but so neither can any other government. . . . Congress can be considered as under only one restriction which does not apply to other governments—they cannot rightfully apply the money they raise to any purpose merely or purely local. . . .

The constitutional test of a right application must always be, whether it be for a purpose of general or local nature. If the former, there can be no want of constitutional power. The quality of the object, as how far it will really promote or not the welfare of the Union, must be a matter of conscientious discretion, and the arguments for or against a measure in this light must be arguments concerning the expediency or in expediency, not of constitutional right.

It is impossible to escape the historical truth or the logic of Hamilton's argument. It was in keeping with the letter and spirit of the convention's records. And it was accepted and approved by President Washington.

The significance of this case cannot be overemphasized. Hamilton had been a member of the convention. Washington had presided over its proceedings. Both knew the history of its purposes and actions. Jefferson had not been a member; he was in Paris at the time. Moreover, his party, amid the threatened bankruptcy that followed the War of 1812, re-established the United States bank and justified its action by reference to a similar conception of the Constitution. In the irony of history, the second Bank Act was upheld by Chief Justice Marshall in an opinion which was founded on Hamilton's interpretation of the powers of Congress.

The conclusion seems inescapable: The majority in the

convention intended to confer upon Congress the power to legislate in the general interest and contemplated a broad and liberal interpretation of national powers. Any other view is out of keeping with the records of the convention and is contrary to the expressed conceptions of the leaders who framed and signed the Constitution.



Chapter VII

Judicial Exposition of Federal Power under the General Welfare Clause

WHEN the Roosevelt Administration sought to overcome the economic and social crisis in which the country was floundering in the spring of 1933, it made extensive use of the power of Congress to lay taxes, to "provide for the common defence and the general welfare of the United States," and the power to appropriate money. For example, Congress appropriated money to be lent in part and given in part to state and local government for the purpose of relieving unemployment through the construction of public works; and Congress also attempted to deal with the crisis in agriculture by making grants of money to farmers on condition that they comply with certain stipulations respecting crop control.

For such appropriations of federal money there had been precedents more or less relevant, but never before in the history of the country had Congress sought to accomplish so many varied purposes under the cover of the general welfare clause and the power to appropriate money. Great opposition to the new federal laws appeared in various parts of the country, and numerous provisions were attacked in the courts. At first the Supreme Court of the United States was inclined to a strict construction of the Constitution, and in 1935 and 1936 it declared invalid large sections of the "New Deal" legislation, for instance, most of the National Industrial Recovery Act and the primary parts of the Agricultural

Adjustment Act. During this early season, federal circuit and district courts were divided in opinion; some of them upheld New Deal statutes and others declared them unconstitutional.

Determined to break judicial opposition to his legislative program, President Roosevelt proposed, in February, 1937, a plan for reconstructing the federal judicial system and adding new justices to the Supreme Court. While the controversy over his project was raging, the Supreme Court took occasion to express a broader view of the Constitution than it had recently entertained. For example, it sustained the Wagner Labor Relations Act in an opinion which seemed to conflict with doctrines announced two years previously when the National Industrial Recovery Act had been declared invalid; and shortly afterward it upheld the Social Security Act.

In the case of *Helvering v. Davis*,¹ one of the Social Security cases, the Court upheld the federal tax on employers generally, including provisions for old-age benefits. Justice Cardozo, speaking for the Court, dealt particularly with the general welfare clause in the following language.

The Social Security Act

Congress may spend money in aid of the "general welfare." Constitution, Art. I, section 8; *United States v. Butler*, 297 U.S. 1, 65; *Steward Machine Co. v. Davis*.² There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. *United States v. Butler*.³ The conception of the spending advocated by Hamilton and strongly reinforced by Story has pre-

¹301 U.S. 619 (1937).

²301 U.S. 548.

³297 U.S. 1, 56 Sup. Ct. 312, 80 L. Ed. 477.

vailed over that of Madison, which has not been lacking its adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. "When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress."⁴ Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times.

The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least of the solidarity of interests that may once have seemed to be divided. Unemployment spreads from State to State, the hinterland now settled that in pioneer days gave an avenue of escape. *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 442. Spreading from State to State, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the Nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co.*, *supra*, has set the doubt at rest. But the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when the journey's end is near. . . .

⁴*United States v. Butler*, *supra*, p. 67. Cf. *Cincinnati Soap Co. v. United States*, 301 U.S. p. 308; *United States v. Realty Co.*, 163 U.S. 427, 440; *Head Money Cases*, 112 U.S. 580, 595.

q The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. This is brought out with a wealth of illustration in recent studies of the problem.⁵ Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors. We have seen this in our study of the problem of unemployment compensation. *Steward Machine Co. v. Davis*, *supra*. A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all.

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom. Counsel for respondent has recalled to us the virtues of self-reliance and frugality. There is a possibility, he says, that aid from a paternal government may sap those sturdy virtues and breed a race of weaklings. If Massachusetts so believes and shapes her laws in that conviction, must her breed of sons be changed, he asks, because some other philosophy of government finds favor in the halls of Congress? But the answer is not doubtful. One might ask with equal reason whether the system of protective tariffs is to be set aside at will in one state or another whenever local policy prefers the rule of *laissez faire*. The issue is a closed one. It was fought out long ago.⁶ When money is spent to promote

⁵Economic Insecurity in Old Age, Washington, D.C., Social Security Board, 1937, Chap. VI, p. 184.

⁶IV Channing, *History of the United States*, p. 404 (South Carolina Nullification); 8 Adams, *History of the United States* (New England Nullification and the Hartford Convention).

the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield.⁷

The broad interpretation of federal power under the Constitution, including the general welfare idea, was expressed by Justice John J. Parker, of North Carolina, speaking for the Federal Circuit Court of the Fourth District. In the case of *Greenwood County, S. C. v. Duke Power Co.*⁸ The following passages are from his opinion in this case, which involved the power of Congress to provide, in the National Industrial Recovery Act, for lending federal money to a county for the purpose of building an electric power plant.

The N.I.R.A.

The statute under which the administrator is acting in making the loan and grant to Greenwood County is title 2 of the National Industrial Recovery Act,⁹ under which \$3,300,000,000 was appropriated by the Congress for the purpose of relieving unemployment throughout the country. Section 201 of that title¹⁰ authorizes the President to create a federal emergency administration of public works, all of the powers of which shall be exercised by an "administrator" to be appointed by the President. . . .

We think that the enactment of these provisions of the statute was well within the power of Congress. It may be conceded that, under ordinary circumstances, the power would not exist to raise and expend funds for construction local in character and not connected with the exercise of any of the powers of regulation expressly conferred upon the federal government; but the circumstances under which this statute was enacted were by no means ordinary and the construction contemplated was not of isolated

⁷Constitution, Art. VI, Par. 2.

⁸81 F2 986 (1936).

⁹48 Stat. 200 (40 U.S.C.A. No. 401 et seq.).

¹⁰40 U.S.C.A. No. 401.

projects but of a vast program of public works intended to relieve a condition of unemployment which was nation-wide in scope and had become a menace, not merely to the safety, morals, health, and general welfare of vast numbers of the people, but also to the stability of the government itself. . . .

In the light of our history, it is idle to say that, in the presence of such a situation as confronted Congress, the national government must stand by and do nothing for the relief of the general distress, confining its activities to matters as to which it is given legislative powers by the Constitution. It is the only instrumentality which the people of the country have which can deal adequately with an economic crisis nation-wide in scope; and there can be no question but that, for the purpose of dealing with such a crisis, it can exercise the power to raise and spend money under Article I, section 8, clause 1 of the Constitution which provides: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. . . ."

There has been much discussion as to the meaning of this "general welfare" clause of the Constitution; but it is now definitely settled that the power of Congress to authorize expenditure of public money for public purposes is not limited by the direct grants of legislative power contained in the Constitution. . . .

If it be conceded, as we think it must be, that the expenditure of public funds for the relief of nation-wide unemployment is within the power of Congress, as being an expenditure in furtherance of the general welfare of the United States, we think that it necessarily follows that expenditures for a nation-wide program of public works for the purpose of providing employment in such an emergency is within the Congressional power; for from the earliest periods of history nations have been accustomed to resort to the construction of public works as a means of relieving the unemployment of their people. Certainly, it is hard to imagine any expenditure which the federal government might make for the purpose of relieving the danger and distress arising from unemployment which would interfere so

little with private business, and would have so little tendency to create a dependent attitude on the part of the people, as a program of public works. And, not only does such a program relieve unemployment by furnishing work in the construction of the immediate projects and in the manufacture of materials to be used therein, but it also makes a lasting contribution to the national wealth, and thus counterbalances to some extent the burden of the increase in the national debt which it entails. If, therefore, the relief of nation-wide unemployment be a legitimate end for Congress to have in view in the exercise of its powers to raise and spend money under the "general welfare" clause, the construction of a nation-wide program of public works would seem to be a legitimate means to that end.

And we do not think that it can be said that Congress is invading the reserved powers of the states, or is making expenditures for matters essentially local in character, merely because the project for which expenditure is made is not connected with interstate commerce and, when considered alone, is local in character. It cannot be said to invade the reserved powers of a state to make loans or grants of money to municipal corporations which the state continues to control, and which are at liberty to reject the loans and grants if they see fit to do so. And a program of works for relieving nation-wide unemployment does not lose its national character and become local merely because each of the public works projects is constructed in some particular locality. If this were true, the spending power under the general welfare clause would be limited, in the manner in which the Supreme Court has just held in *United States v. Butler* that it is not limited, to objects embraced within the direct grants of legislative power. No matter how clearly national the end to be attained by expenditures under the general welfare clause, or how appropriate the means adopted for the attainment of that end, each individual expenditure must needs have a local as well as a national character; for money cannot be expended in vacuo and no project can be imagined, even though part of a national program, which will not have a local situs. The national character of the program here involved is shown, however, by the fact that projects of various kinds have been

commenced in 3,040 of the 3,070 counties of the country; and the magnitude of the undertaking clearly appears from the report of the administrator to the Senate, of March 22, 1934.

In another Federal Circuit Court, Justice O. L. Phillips, in dealing with the power of Congress to authorize the Public Works Administration to make loans to municipalities for public works purposes, sustained the Act in question. Justice Phillips's opinion contained the following review and interpretation of the general welfare principle in the case of *Kansas City Gas and Electric Co. v. Independence, Kansas*.¹¹

Public Works Administration

Section 8, Article 1 of the Constitution provides:

"The Congress shall have power:

"To lay and collect Taxes, Duties, Imposts and Excises, to pay the debts and provide for the common defence and general welfare of the United States;"

In the first draft of the Constitution, the provision respecting taxation read: "The legislature of the United States shall have power to lay and collect taxes, duties, impost, and excises."

It contained no words qualifying or limiting the power granted.

Later certain matters, among them a proposition to secure the payment of the public debt, to appropriate funds exclusively for that purpose and to secure the public creditors from a violation of the public faith when pledged by the authority of the legislature, were referred to a committee of five.

The committee of five reported that there should be added to the provision respecting taxation the following: "For the payment of the debts and the necessary expenses of the United States, provided, that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than — years."

¹¹79 F2 32 (1935).

Later a motion to amend the provision respecting taxation to read, "The legislature shall fulfil the engagements, and discharge the debts of the United States, and shall have power to lay and collect taxes, duties, imposts and excises," was adopted.

Thereafter it was proposed that the following be added there-to: "For the payment of said debts, and for the defraying the expenses that shall be incurred for the common defense and general welfare." The proposal was disapproved by a vote of ten to one. This left the clause, giving Congress unlimited power of taxation, as reported in the original draft. But the giving of an unlimited grant of power seems to have been unsatisfactory, because thereafter another committee reported that the clause respecting taxation should read as follows: "The legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." This report was unanimously approved.

Thus it will be seen that the clause "to pay the debts and provide for the common defence and general welfare of the United States," . . . was first brought forward in connection with the power to lay taxes; that it was originally adopted as a qualification or limitation of the objects of that power; and that it was not discussed as an independent power, or as a general phrase pointing to or connected with the subsequent enumerated powers. There was another amendment proposed, which would have created a general power to this effect, but it was never adopted, and seems silently to have been abandoned."¹²

In the early history of the Nation the clause, "to . . . provide for . . . the general welfare of the United States," engendered much discussion, and divergent views were expressed by eminent statesmen and publicists.

Madison expressed the view that it is limited by the specifically enumerated powers granted to the Congress. He said: "Whenever . . . money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for

¹²Story on the Constitution (5th ed.) Vol. I, ¶¶ 928, 929.

it may be applied to it. If it be not, no such application can be made."¹³

On the other hand Hamilton expressed the view that, subject to the qualifications that "all duties, imposts, and excises shall be uniform throughout the United States; . . . no capitation, or other direct tax, shall be laid, unless in proportion to the census. . . ," and "no tax or duty shall be laid on articles exported from any State" "the power to raise money is plenary and indefinite, and the objects to which it may be appropriated . . . no less comprehensive than the payment of the public debts, and the providing for the common defence and general welfare"; that the phrase general welfare "is as comprehensive as any that could have been used" and embraces "a vast variety of particulars, which are susceptible neither of specification nor of definition"; that it is "left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which . . . an appropriation of money is requisite and proper"; that "whatever concerns the general interest of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, as far as regards an application of money"; and that "the only qualification of the generality of the phrase . . . is . . . that the object . . . be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot."¹⁴

In connection with his veto message of May 4, 1822, of "An Act for the Preservation and Repair of the Cumberland Road," President Monroe sent a statement to the House of Representatives which contains an elaborate discussion of the meaning of the phrase, "to pay the debts and provide for the common defence and general welfare."

He reaches the conclusion that the phrase gives Congress a right to appropriate public money and is "incidental to the great objects of the first branch of the grant, which authorizes Congress to lay and collect taxes."

¹³Madison's Report on the Virginia Resolutions; Elliott's Debates, Vol. IV, p. 552.

¹⁴The Works of Alexander Hamilton (Lodge) Vol. IV, pp. 150-54.

He states that formerly he was inclined to the view [that] the national government had no right to expend money except in performance of acts authorized by the other specific grants, but on further reflection and observation he had changed his view for reasons which he stated in part, as follows:

"The grant consists, as heretofore observed, of a two-fold power—the first to raise, and the second to appropriate, the public money—and the terms used in both instances are general and unqualified. Each branch was obviously drawn with a view to the other, and the import of each tends to illustrate that of the other. . . .

"If we look to the second branch of this power, that which authorizes the appropriation of the money thus raised, we find that it is not less general and unqualified than the power to raise it. More comprehensive terms than to 'pay the debts and provide for the common defence and general welfare' could not have been used. So intimately connected with and dependent on each other are these two branches of power that had either been limited the limitation would have had the like effect on the other. Had the power to raise money been conditional or restricted to special purposes, the appropriation must have corresponded with it, for none but the money raised could be appropriated, nor could it be appropriated to other purposes than those which were permitted. On the other hand, if the right of appropriation had been restricted to certain purposes, it would be useless and improper to raise more than would be adequate for those purposes. It may fairly be inferred that these restraints or checks have been carefully and intentionally avoided. The power in each branch is alike broad and unqualified, and each is drawn with peculiar fitness to the other, the latter requiring terms of great extent and force to accommodate the former, which have been adopted, and both placed in the same clause and sentence. Can it be presumed that all these circumstances were so nicely adjusted by mere accident? Is it not more just to conclude that they were the result of due deliberation and design? Had it been intended that the Congress should be restricted in the appropriation of the public money to such expenditures as were authorized by a

rigid construction of the other specific grants, how easy would it have been to have provided for it by declaration to that effect. The omission of such declaration is therefore an additional proof that it was not intended that the grant should be so construed."

He further expressed the view that the power of the national government to raise and appropriate money was not without limitation, saying:

"Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not. The government of the United States is a limited government, instituted for great national purposes and for those only. Other interests are committed to the States, whose duty it is to provide for them. Each government should look to the great and essential purposes for which it was instituted and confine itself to these purposes."¹⁸

Mr. Joseph Story in his great work on the Constitution devotes many pages to an elaborate discussion of the meaning of section 8 of Article 1. See sections 905 to 991, inclusive, Fifth Edition.

He holds that the provision with respect to taxation should be construed as if written, "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, in order to pay the debts, and to provide for the common defence and general welfare of the United States." He rejects the Madison construction, and quotes with approval from Hamilton's report and Monroe's message, *supra*. He concludes, however, that the power of Congress to lay taxes and appropriate money is not unlimited, saying:

"§922. A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contra-

¹⁸Messages and Papers of the Presidents (Richardson) Vol. II, pp. 162-67.

distinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under such circumstances, necessarily a qualified power. . . ."

He then refers to the practical construction that had been placed upon section 8 of Article 1 by the legislative and administrative branches of the government, saying:

"§991. In regard to the practice of the government, it has been entirely in conformity to the principles here laid down. Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be construed in their broad or their narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities; as in the relief of St. Domingo refugees, in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812. An illustration equally forcible of a domestic character, is in the bounty given in the cod-fisheries, which was strenuously resisted on constitutional grounds in 1792, but which still maintains its place in the statute book of the United States."

To the last quotation from Story we may here appropriately add the following expression of the Supreme Court in *Commonwealth of Massachusetts v. Mellon*:¹⁶

"It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the government, as an examination of the acts of Congress will disclose, a large number of

¹⁶262 U.S. 447, 448, 43 S.Ct. 597, 601, 67 L.Ed. 1078.

statutes appropriating or involving the expenditure of moneys for nonfederal purposes have been enacted and carried into effect."¹⁷

This long unchallenged practical construction by the legislative and executive branches of the government is entitled to great weight.¹⁸

The decisions of the Supreme Court afford some aid in reaching the proper construction of section 8 of Article 1.

In *Gibbons v. Ogden*,¹⁹ the court said:

"Congress is authorized to lay and collect taxes, &c., to pay the debts, and provide for the common defence and general welfare of the United States. This does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. In imposing taxes for state purposes, they are not doing what congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states."

In *United States v. Gettysburg Electric Ry. Co.*,²⁰ the question was whether the government had power to condemn the land upon which the Battle of Gettysburg was fought. The court said the power of condemnation "results from the powers that are given, and it is implied because of its necessity, or because it is appropriate in exercising those powers. Congress has power to declare war, and to create and equip armies and navies. It has the great power of taxation, to be exercised for the common defence and general welfare:"

In *United States v. Realty Co.*²¹ the court said:

¹⁷See, also, "The New Deal and the Public Money," McGuire, *Georgetown Law Journal*, Jan. 1935, pp. 179-88.

¹⁸*McGrain v. Daugherty*, 273 U.S. 135, 174, 47 S.Ct. 319, 71 L.Ed. 580, 50 A.L.R. 1; *Wheeler Lumber Bridge and Supply Co. of Des Moines v. United States*, 281 U.S. 572, 576, 50 S.Ct. 419, 74 L.Ed. 1047; *Smiley v. Holm*, 285 U.S. 355, 369, 52 S.Ct. 397, 76 L.Ed. 795; *Missouri Utilities Co. v. City of California (D.C.)* 8 F. Supp. 454, 461.

¹⁹9 Wheat. 1, 199, 6 L.Ed. 23.

²⁰160 U.S. 668, 16 S.Ct. 427, 429, 40 L.Ed. 576.

²¹163 U.S. 427, 16 S.Ct. 1120, 1125, 41 L.Ed. 215,

"It is unnecessary to hold here that congress has power to appropriate the public money in the treasury to any purpose whatever which it may choose to say is in payment of a debt or for purposes of the general welfare. A decision of that question may be postponed until it arises."

There is no finer example of expert draftsmanship of fundamental law than the Constitution of the United States. Words were chosen and employed with meticulous care, and surplusage was scrupulously avoided. Section 8 of Article 1 confers on the Congress seventeen specifically enumerated powers, and each clause is separated by a semicolon.²²

To these is added the following: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

If the taxing power were limited to the power to lay taxes to effectuate the sixteen specific powers that follow it, the taxing clause would be mere verbiage, because the power last quoted authorizes the Congress to make all laws necessary and proper to carry into execution the sixteen specific powers granted by the provisions which precede it. By the plain meaning of the language employed, Congress is given the specific and independent grant of power to lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States. This, and the long practical construction given the taxing clause, leads us to reject the Madison interpretation. . . .

If the government may appropriate money for the relief of the indigent, where the need is national in scope and character, may it not accomplish that end indirectly by promoting State and municipal public works throughout the Nation in order to stimulate industry, and reduce unemployment, and is not the means to accomplish the end a matter for congressional determination?

Nor does the federal government by making loans and grants under this Act encroach on the sovereign rights of the States. It does not enter the territorial limits of the States and there, through its own agencies or instrumentalities, engage in a non-

²²In the U.S. Stat. Vol. 1, p. 13, the clauses are separated by colons.

federal activity. It simply advances funds by loans or grants to States and their agencies, to carry out their own powers to construct public projects, for the purpose of promoting the general welfare of the United States. . . .

We believe the Act may be and should be construed as implying a direction to the President to carry out and effectuate its purposes, and to make loans and grants, within the limits of a reasonable discretion, for projects within the program. It clearly is our duty to construe the Act, if fairly possible, "so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score."²³

When the attorney general of the United States, Homer Cummings, was called upon in 1935 to express his opinion respecting the validity of certain provisions of the National Housing Act, he gave an affirmative view and rested his argument extensively on the general welfare clause.²⁴

The National Housing Act

It is provided in the Constitution (Art. I, Sec. 8):

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; . . ."

From the power to tax for the purposes specified, there arises the right to expend for the same purposes the revenues derived from the taxes so authorized. Cf. *United States v. Realty Co.*²⁵

While there have been many appropriations of funds in the interest of the general welfare during all periods of our national

²³*United States v. Jim Fuy Moy*, 241 U.S. 394, 401, 36 S.Ct. 658, 60 L.Ed. 1061, Ann. Cas. 1917D, 854; *Carey v. State of South Dakota*, 250 U.S. 118, 122, 39 S.Ct. 403, 63 L.Ed. 886; *United States v. La Franca*, 282 U.S. 568, 574, 51 S.Ct. 278, 75 L.Ed. 551; *Interstate Commerce Commission v. Oregon-Washington R. & Nav. Co.*, 288 U.S. 14, 40, 53, S.Ct. 266, 77 L.Ed. 588; *George Moore Ice Cream Co., Inc., v. Rose*, 289 U.S. 373, 379, 53 S.Ct. 620, 77 L.Ed. 1265

²⁴Opinions of the Attorney General, Vol. 38, August, 1935.

²⁵163 U.S. 427, 440.

existence, the question of the permissible extent of the exercise of this power has seldom come before the Supreme Court. ¶

In *United States v. Gettysburg Electric Ry.*,²⁶ the court referred to "the great power of taxation to be exercised for the common defense and general welfare," although the conclusion, upholding the right of the Government to establish the Gettysburg National Military Park, was not based entirely upon this source of power. As the court stated—and the principle is applicable in the present case—"any number of . . . powers may be grouped together, and the inference from them all may be drawn that the power claimed has been conferred."

In *United States v. Realty Co.*, *supra*, (a decision perhaps not strictly applicable here because based on the principle that the Congress may appropriate money to pay "debts" not strictly legal in character but cognizable upon considerations of honor, morals, gratitude, charity, etc.) the court noticed the long practice of the Congress in making appropriations in the interest of the general welfare and mentioned a list of acts making such appropriations, appended to the brief for one of the defendants in error. Another, and shorter, list of such statutes appears in 74 Cong. Rec. 708. I think, however, the practice is too well established and too well known to require evidence in support of its existence.

This dearth of adjudications in the Supreme Court concerning the general welfare clause is accounted for, in part, by the fact that the power, although long and repeatedly exercised by the Congress, has seldom been seriously challenged; but it is also of bearing, as indicated by *Massachusetts v. Mellon*,²⁷ (involving a challenge of the constitutionality of the Act appropriating funds for the furtherance of efforts to reduce maternal and infant mortality) that it does not ordinarily lie within the province of a litigant to challenge the power and discretion of the Congress in this respect.

The Circuit Court of Appeals for the Eighth Circuit, in *Langer v. United States*,²⁸ recently (May 7, 1935) had occasion to con-

²⁶160 U.S. 668, 681, 683.

²⁷262 U.S. 447.

²⁸76 Fed. (2d) 817, 825.

sider the question and concluded in favor of the authority of the Congress to appropriate money "for purposes outside the enumerated powers"—for public purposes connected with the general national welfare—and it quoted in this connection the statement in *McPherson v. Blacker*,²⁹ that "the construction . . . has prevailed too long and been too uniform to justify us in interpreting the language of the Constitution as conveying any other meaning than that heretofore ascribed, and it must be treated as decisive."

The Circuit Court of Appeals for the Tenth Circuit, in *Kansas City Gas and Electric Co. v. City of Independence*,³⁰ has reached the same conclusion, aptly pointing out that—"If the taxing power were limited to the power to lay taxes to effectuate the sixteen specific powers that follow it, the tax clause would be mere verbiage. . . ."

The only contrary view of comparable authority was expressed in 1895 in *U.S. ex rel. Miles Planting & Mfg. Co. v. Carlisle*.³¹

I think I may safely say that practically all commentators upon the Constitution, including many who actually participated in its framing and in the events which accompanied its adoption, have concluded that the so-called general welfare clause empowers the Congress to spend moneys for the general welfare and that there is no limitation which requires that such expenditures shall be in the exercise of or connected with other enumerated powers.³²

²⁹146 U.S. 1.

³⁰August 20, 1935, 79 Fed. (2d) 32.

³¹5 D.C. App. 138, 141-61.

³²Hamilton's Works (Lodge ed.) Vol. IV, pp. 70, 151; Monroe, View of the President of the United States on the Subject of Internal Improvements, 2 Richardson, 144, 167-73; Calhoun, 5 Benton (Abridgement), 704, 706; Tucker, American State Papers, Miscellaneous, 443, 446; John Quincy Adams, Inaugural Address, 2 Richardson, 298; Story on the Constitution (5th ed.), Secs. 913, 923, 924, 991; Hare, Constitutional Law, p. 241; Pomeroy, Introduction to Constitutional Law (10th ed.), Secs. 274-75; Burdick on the Constitution, Sec. 77; Willoughby, United States Constitution (2d ed.), Vol. I, Sec. 62; Corwin, The Spending Power of Congress, 36 Harvard L.R. 548.

The debates in the ratifying conventions in the states indicate acceptance of the same view.⁸³

I quote from Hamilton, *supra*, (p. 151) in his Report on Manufactures:

"The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the 'general welfare,' and because this necessarily embraces a vast variety of particulars which are susceptible neither of specification nor of definition. It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, as far as regards an application of money. . . ."

President Washington, it may be noted during his first term, recommended to the Congress an appropriation "for the establishment of a national university and the encouragement of agriculture," which, presumably, is to be justified as an appropriation in the interest of the general welfare. Richardson, *Messages and Papers of the Presidents*, pp. 201-202.

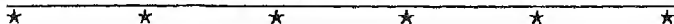
Willoughby, *supra*, states:

"It scarcely needs to be pointed out that a considerable number of the administrative services now carried on by the National Government and maintained by Federal appropriations, depend for their constitutionality wholly upon the power of Congress to authorize the expenditure of public moneys for the promotion of the general welfare of the United States. Among such services which are to a very slight, if any, extent concerned with matters directly connected with the exercise of powers specifically or by implication vested in the Federal Government, may be mentioned the Public Health Service, the Bureau of Education, the Geological Survey, the Bureau of

⁸³Elliott's *Debates on the Federal Constitution—Analyses* by Corwin, 36 Harvard L.R. 548, and McGuire, 23 *Georgetown L.J.*, 155, 171.

Mines, the Department of Agriculture, with its many bureaus, the Bureau of Fisheries, the Bureau of Labor Statistics, the Children's Bureau, the Women's Bureau, the Smithsonian Institution, the National Gallery of Art, the Bureau of American Ethnology, the Astrophysical Observatory, and many of the special services in various of the other administrative departments of the Federal Government."

I regard it, therefore, as an established principle that the Congress has the power, which it has in fact so long and repeatedly exercised, to provide from the Treasury for the general welfare. It further seems to be incontrovertible that the purposes of the National Housing Act are for the welfare of the nation as a whole. Not only does the Act provide protection for our national financial structure, but it will also result in encouragement of better housing conditions throughout the country, in the provision of cheap and safe credit for the home owners of the United States, and in the stimulation of the building industry, and indirectly of the durable goods industry, with consequent improvement in general conditions, including the furnishing of employment to many of the nation's unemployed. . . .



Chapter VIII

Cultural and Personal Liberty

THE general policy of *laissez faire*, with which are associated the ideas of liberty and individualism, presents two aspects, the one economic and the other cultural, although they are by no means dissociated in theory and practice. In essence, *laissez faire* commands the government to let us alone in the fields of economy and culture. On the economic side, it is characterized by nonintervention in agriculture, industry, and commerce: let individuals be free to manage their property and carry on their economic activities without government interference. On the side of culture, it means freedom of religious worship, freedom of press and speech, freedom to inquire, to know, and to expound, freedom to write, paint, draw, design, and express ideas and emotions in colors, forms, and materials.

In some measure this *laissez faire* in economy and culture was a revolt against the previous forms of state intervention—against mercantilism in economy and against government censorship, against the state church, against state dominance of science, letters, and the arts. As the French Revolution in part was a revolt against king, aristocracy, and clergy, so it was a revolt in part against the whole economic and cultural policy of the Grand Monarchy as typified in the regime of Louis XIV. Yet at the same time economic and cultural *laissez faire* represented a constructive ideal: freedom in

economy will increase the wealth of nations and raise the standards of living to the highest possible level; while freedom in culture will release creative energies, enrich life, and bring the long wars of religions to a close in a compact of peace.

The Distinction between Economic and Cultural Liberty

Though associated in time and development, economic interests and cultural interests are by no means exactly identical. Despite their intimate affiliations, the one or the other may be and is emphasized in thought and practice. A person who believes ardently in government control over imports in the form of protective tariffs may at the same time believe in the extremist form of religious liberty. A person who advocates severe legislation against opinions deemed "subversive" may at the same moment demand that the government abstain from all interference with business enterprise. There never has been and is not now a complete identity between economic liberty and cultural liberty. In every period since the revolutions of the eighteenth century, there have been men and women who have placed cultural liberty above economic advantages, and have sacrificed economic advantages for the sake of cultural freedom. Indeed it would be difficult to discover among the great promoters of religious liberty and freedom of thought many persons primarily devoted to the acquisition of material goods through freedom of competition. Frequently, if not generally, poverty has dogged their steps while they have proclaimed and championed human rights in matters of religious faith, inquiry, and opinion. To ignore the division between economic liberty and cultural liberty is to ignore realities of the highest potency in the shaping of policy and history.

The distinction between cultural liberty and economic liberty must be sharply emphasized in view of the tendency

to identify democracy and liberty with capitalism, its methods, spirit, and results (see quotation from Mussolini, *above*, page 48). This is not to say that liberty and property are in practice wholly separable, or to deny the fact that a person with property has more liberty of a kind than the person without property who is perhaps unemployed besides. But there are differences in fact between measures of law and government which pertain to personal rights and those which pertain to the ownership, use, and control of property.

Here again it is necessary to emphasize the fact that the personal liberties inscribed in the Constitution of the United States all antedated the Industrial Revolution and the flowering of capitalism. All originated in an age essentially agricultural. Commerce did facilitate the extension of these liberties, no doubt, but commerce alone did not create them. And as a matter of fact also it is difficult to find in the pages of history many distinguished capitalists who were greatly exercised about the protection, development, and application of personal liberties as distinguished from rights connected with property.

The division between personal liberty and rights of property is clearly drawn in the Constitution of the United States. The original document contained several provisions touching rights of person—some against the federal government, others against the states. It declared that the privilege of the writ of habeas corpus shall not be suspended unless, in cases *of rebellion or invasion, the public safety may require it*. What a precious right is this writ! What bloody struggles were associated with its firm establishment in English history! The existence of this right means that no official or despot can make law as he goes along—arrest, imprison, condemn, and execute any person without giving him a right of a hearing before a judge in open court.

Again, "No bill of attainder or ex post facto law shall be passed." Members of Congress, inflamed by excitement and

rage, cannot pass a bill singling out any person or group of persons and condemning them to prison or death. All persons, rich and poor, great and humble, are entitled to trial in an open court whenever accused of any crime. Nor can Congress make any action which was not a crime when committed a crime afterwards and provide punishment for such an act.

The Constitution also stipulates that no state can pass a bill of attainder or an *ex post facto* law.

Only a person familiar with three centuries of struggle for these protections and with the conduct of recent despots in Europe—wholesale shootings, concentration camps, and persecutions—can appreciate the full meaning of these brief provisions in the Constitution of the United States.

In the article on the judiciary, the Constitution provides that the trial of all crimes, except in cases of impeachment, shall be by jury and that such trial shall be held in the state where the said crimes shall have been committed. In the United States no "party leader," army officer, or secret police can seize any person, charge him with crime, try him behind closed doors, and send him to death.

All these provisions in the original constitution are strengthened by the first ten amendments—the additions made to the list of restraints on Congress. A careful reading of these amendments shows that nearly all the provisions come within the domain of personal or cultural liberty. A summary is impressive:

No law respecting the establishment of religion

Freedom of religious worship

Freedom of speech

Freedom of the press

Right of the people to assemble peaceably

Right of petition

No quartering of soldiers on the people in time of peace
 Security of persons, houses, papers, and effects against unreasonable searches and seizures
 Security of life, liberty, and property under due process of law
 Additional safeguards against arbitrary trials, excessive bail, cruel and unusual punishments.

In all this long list, only a few words are concerned with rights of property. There can be no unreasonable searches and seizures of papers and effects. No one shall be deprived of his property without due process of law. These provisions do not declare any absolute rights in property. They merely protect property against arbitrary, highhanded, and discriminatory actions of government and its officials. They mean a certain equality of treatment for the various classes of property owners in the enactment of laws which tax, regulate, and take property for public use.

To the provisions for personal rights must be added the clauses of the Fourteenth Amendment which restrain the states, especially the clauses setting forth equal privileges and immunities and guarding life, liberty, and property against state actions not in accord with due process. It is true that the Supreme Court for many years laid heavy emphasis on the protection of property rights, but during the past twenty-five years it has modified its earlier views and has developed the "life and liberty" clause of the Fourteenth Amendment into a broad safeguard of personal liberties. To describe them fully is impossible within a brief compass.

No doubt these constitutional liberties are sometimes violated by government officials, courts of law, and private mobs, especially in times of war and great excitement. A long list of abuses may be drawn from American history.

So, too, a long list of protests against these violations may be drawn from the same history. The constitutional right to criticize officials, the police, and the courts permits such protests. And protests often express that eternal vigilance which is the price of liberty. Even so we should not lose to sight, in the midst of numerous cases of abuse, the far larger list of cases and occasions in which these personal liberties have been protected and enjoyed.

Such are the broad principles of personal liberty in the United States under the Constitution. Yet generalizations are wanting in force for citizens who lack a knowledge of their long history and of the concrete practices adopted under these principles. To give a complete picture would require whole volumes.

The Defense of Personal Liberty by the Supreme Court

Perhaps the best way to drive home the deep significance of these doctrines of personal liberty is to give one concrete case decided by the Supreme Court of the United States. The case here chosen is that of four Negroes arrested, tried, and condemned to death in the state of Florida by duly constituted officials and courts. These Negroes were not rich men or men of property. In fact they came into the Supreme Court as paupers. They claimed that they had been mistreated by the officials of Florida and were about to be deprived of life and liberty without due process of law. Speaking for the Supreme Court of the United States, Mr. Justice Black delivered the following opinion, which saved the four Negroes from execution:

The grave question presented by the petition for certiorari, granted in forma pauperis,¹ was whether proceedings in which confessions were utilized, and which culminated in sentences

¹*Chambers et al. v. Florida*, 308 U.S. 541.

The general opinion of the Court is at 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716.

of death upon four young negro men in the State of Florida, failed to afford the safeguard of that due process of law guaranteed by the Fourteenth Amendment.²

First. The State of Florida challenges our jurisdiction to look behind the judgments below claiming that the issues of fact upon which petitioners base their claim that due process was denied them have been finally determined because passed upon by a jury. However, use by a State of an improperly obtained confession may constitute a denial of due process of law as guaranteed in the Fourteenth Amendment.³ Since petitioners have seasonably asserted the right under the Federal Constitution to have their guilt or innocence of a capital crime determined without reliance upon confessions obtained by means proscribed by the due process clause of the Fourteenth Amendment, we must determine independently whether petitioners' confessions

²Petitioners Williamson, Woodward and Davis pleaded guilty of murder and petitioner Chambers was found guilty by a jury; all were sentenced to death, and the Supreme Court of Florida affirmed. 111 Fla. 707, 151 So. 499. Upon the allegation that, unknown to the trial judge, the confessions on which the judgments and sentences of death were based were not voluntary and had been obtained by coercion and duress, the State Supreme Court granted leave to present a petition for writ of error coram nobis to the Broward County Circuit Court, 111 Fla. 786, 152 So. 437. The Circuit Court denied the petition without trial of the issues raised by it and the State Supreme Court reversed and ordered the issues submitted to a jury. 117 Fla. 642, 158 So. 153. Upon a verdict adverse to petitioners, the Circuit Court re-affirmed the original judgments and sentences. Again, the State Supreme Court reversed, holding that the issue of force, fear of personal violence and duress had been properly submitted to the jury, but the issue raised by the assignment of error alleging that the confessions and pleas "were not in fact freely and voluntarily made" had not been clearly submitted to the jury. 123 Fla. 734, 737, 167 So. 697. A change of venue, to Palm Beach County, was granted, a jury again found against petitioners and the Broward Circuit Court once more re-affirmed the judgments and sentences of death. The Supreme Court of Florida, one judge dissenting, affirmed, 136 Fla. 568, 187 So. 156. While the petition thus seeks review of the judgments and sentences of death rendered in the Broward Circuit Court and reaffirmed in the Palm Beach Circuit Court, the evidence before us consists solely of the transcript of proceedings (on writ of error coram nobis) in Palm Beach County Court wherein the circumstances surrounding the obtaining of petitioners' alleged confessions were passed on by a jury.

³*Brown v. Mississippi*, 297 U. S. 278.

were so obtained, by review of the facts upon which that issue necessarily turns.⁴

Second. The record shows—

About nine o'clock on the night of Saturday, May 13, 1933, Robert Darcy, an elderly white man, was robbed and murdered in Pompano, Florida, a small town in Broward County about twelve miles from Fort Lauderdale, the County seat. The opinion of the Supreme Court of Florida affirming petitioners' conviction for this crime stated that "It was one of those crimes that induced an enraged community"⁵ And, as the dissenting judge pointed out, "The murder and robbery of the elderly Mr. Darcy . . . was a most dastardly and atrocious crime. It naturally aroused great and well deserved indignation."⁶

Between 9:30 and 10 o'clock after the murder, petitioner Charlie Davis was arrested, and within the next twenty-four hours from twenty-five to forty negroes living in the community, including petitioners Williamson, Chambers and Woodward, were arrested without warrants and confined in the Broward County jail, at Fort Lauderdale. On the night of the crime, attempts to trail the murderers by bloodhounds brought J. T. Williams, a convict guard, into the proceedings. From then until confessions were obtained and petitioners were sentenced, he took a prominent part. About 11 P. M. on the following Monday, May 15, the sheriff and Williams took several of the imprisoned negroes, including Williamson and Chambers, to the Dade County jail at Miami. The sheriff testified that they were taken there because he felt a possibility of mob violence and "wanted to give protection to every prisoner . . . in jail." Evidence of petitioners was that on the way to Miami a motorcycle patrolman drew up to the car in which the men were riding and the sheriff "told the cop that he had some negroes that he . . . taking down to Miami to escape a mob." This statement was not denied by the sheriff in his testimony and Williams did not testify at all; Williams apparently has now disappeared.

⁴*Pierre v. Louisiana*, 306 U. S. 354, 358; *Norris v. Alabama*, 294 U. S. 587, 590.

⁵136 Fla. 568, 572, 187 So. 156, 157.

⁶*Id.*, 574.

Upon order of Williams, petitioner Williamson was kept in the death cell of the Dade County jail. The prisoners thus spirited to Miami were returned to the Fort Lauderdale jail the next day, Tuesday.

It is clear from the evidence of both the State and petitioners that from Sunday, May 14, to Saturday, May 20, the thirty to forty negro suspects were subjected to questioning and cross questioning (with the exception that several of the suspects were in Dade County jail over one night). From the afternoon of Saturday, May 20, until sunrise of the 21st, petitioners and possibly one or two others underwent persistent and repeated questioning. The Supreme Court of Florida said the questioning "was in progress several days and all night before the confessions were secured" and referred to the last night as an "all night vigil." The sheriff who supervised the procedure of continued interrogation testified that he questioned the prisoners "in the day time all the week," but did not question them during any night before the all night vigil of Saturday, May 20, because after having "questioned them all day . . . [he] was tired." Other evidence of the State was "that the officers of Broward County were in that jail almost continually during the whole week questioning these boys, and other boys, in connection with this" case.

The process of repeated questioning took place in the jailer's quarters on the fourth floor of the jail. During the week following their arrests and until their confessions were finally acceptable to the State's attorney in the early dawn of Sunday, May 21st, petitioners and their fellow prisoners were led one at a time from their cells to the questioning room, quizzed, and returned to their cells to await another turn. So far as appears, the prisoners at no time during the week were permitted to see or confer with counsel or a single friend or relative. When carried singly from his cell and subjected to questioning, each found himself, a single prisoner, surrounded in a fourth floor jail room by four to ten men, the county sheriff, his deputies, a convict guard, and other white officers and citizens of the community.

The testimony is in conflict as to whether all four petitioners

were continually threatened and physically mistreated until they finally, in hopeless desperation and fear of their lives, agreed to confess on Sunday morning just after daylight. Be that as it may, it is certain that by Saturday, May 20th, five days of continued questioning had elicited no confession. Admittedly, a concentration of effort—directed against a small number of prisoners including petitioners—on the part of the questioners, principally the sheriff and Williams, the convict guard, began about 3:30 that Saturday afternoon. From that hour on, with only short intervals for food and rest for the questioners—"They all stayed up all night." "They bring one of them at a time backwards and forwards . . . until they confessed." And Williams was present and participating that night, during the whole of which the jail cook served coffee and sandwiches to the men who "grilled" the prisoners.

Sometime in the early hours of Sunday, the 21st, probably about 2:30 A. M., Woodward apparently "broke"—as one of the State's witnesses put it—after a fifteen or twenty minute period of questioning by Williams, the sheriff and the constable "one right after the other." The State's attorney was awakened at his home, and called to the jail. He came, but was dissatisfied with the confession of Woodward which he took down in writing at that time, and said something like "tear this paper up, that isn't what I want, when you get something worth while call me." This same State's attorney conducted the State's case

⁷A constable of the community, testifying about this particular incident, said in part:

"Q. Were you there when Mr. Maire [State's Attorney] talked to Walter Woodward the first time he came over there?

"A. Yes, sir.

"Q. Take his confession down in writing?

"A. Yes.

" . . .

"Q. If he made a confession why did you all keep on questioning him about it. As a matter of fact, what he said that time wasn't what you wanted him to say, was it?

"A. It wasn't what he said the last time.

"Q. It wasn't what you wanted him to say, was it?

"A. We didn't think it was all correct,

in the circuit court below and also made himself a witness, but did not testify as to why Woodward's first alleged confession was unsatisfactory to him. The sheriff did, however:

"Q. What part of it did you think wasn't correct. Would you say what he told you there at that time was freely and voluntarily made?

"A. Yes, sir.

" . . .

"Q. What he freely and voluntarily told you in the way of a confession at that time, it wasn't what you wanted?

"A. It didn't make up like it should.

"Q. What matter didn't make up?

"A. There was some things he told us that couldn't possibly be true.

" . . .

"Q. What did Mr. Maire say about it at that time; did you hear Mr. Maire say at this time 'tear this paper up, that isn't what I want, when you get something worth while call me,' or words to that effect?

"A. Something similar to that.

"Q. That did happen that night?

"A. Yes, sir.

"Q. That was in the presence of Walter Woodward?

"A. Yes, sir."

And petitioner Woodward testified on this subject as follows:

"A. . . . I was taken out several times on the night of the 20th . . . So I still denied it. . . .

" . . .

"A. He said I had told lies and kept him sitting up all the week and he was tired and if I didn't come across I would never see the sun rise.

" . . .

"A. . . . then I was taken back to the private cell. . . . and shortly after that they come back, shortly after that, twenty or twenty-five minutes, and bring me out. . . . I [told Williams] if he would send for the State attorney he could take down what I said, I said send for him and I will tell him what I know. So he sent for Mr. Maire some time during Saturday night, must have been around one or two o'clock in the night, it was after midnight, and so he sent for Mr. Maire, I didn't know Mr. Maire then, but I know him now by his face.

" . . .

"A. Well he come in and said 'this boy got something to tell me' and Captain Williams says 'yes, he is ready to tell you.' . . .

" . . .

" . . . Mr. Maire had a pen and a book to take down what I told him, which he said had to be on the typewriter, but I didn't see any typewriter, I saw him with a pen and book, so whether it was shorthand or regular writing I don't know, but he took it down with pen. After I told him my story he said it was no good, and he tore it up. . . .

"A. No, it wasn't false, part of it was true and part of it wasn't; Mr. Maire [the State's attorney] said there wasn't enough. It wasn't clear enough.

" . . .

"Q. . . . Was that voluntarily made at that time?

"A. Yes, sir.

"Q. It was voluntarily made that time.

"A. Yes, sir.

"Q. You didn't consider it sufficient?

"A. Mr. Maire.

"Q. Mr. Maire told you that it wasn't sufficient, so you kept on questioning him until the time you got him to make a free and voluntary confession of other matters that he hadn't included in the first?

"A. No, sir, we questioned him there and we caught him in lies.

"Q. Caught all of them telling lies?

"A. Caught every one of them lying to us that night, yes, sir.

"Q. Did you tell them they were lying?

"A. Yes, sir.

"Q. What was it Mr. Maire said?

"A. He told them it wasn't no good, when they got something out of me he would be back. It was late he had to go back and go to bed.

" . . .

"A. . . . I wasn't in the cell long before they come back. . . .

" . . .

"Q. How long was that from the time you was brought into that room until Mr. Maire left there?

"A. Something like two or three hours, I guess, because it was around sunrise when I went into the room.

"Q. Had you slept any that night, Walter?

"A. No, sir. I was walked all night, not continually, but I didn't have no time to sleep except in short spaces of the night.

" . . .

"Q. When Mr. Maire got there it was after daylight?

"A. Yes, sir.

" . . .

"Q. Why did you say to them that morning anything after you were brought into the room?

"A. Because I was scared, . . ."

"Q. Just how would you tell them that?

"A. Just like I am talking to you.

"Q. You said 'Jack, you told me a lie'?

"A. Yes, sir."

After one week's constant denial of all guilt, petitioners "broke."

Just before sunrise, the State officials got something "worth-while" from petitioners which the State's attorney would "want"; again he was called; he came; in the presence of those who had carried on and witnessed the all night questioning, he caused his questions and petitioners' answers to be stenographically reported. These are the confessions utilized by the State to obtain the judgments upon which petitioners were sentenced to death. No formal charges had been brought before the confessions. Two days thereafter, petitioners were indicted, were arraigned and Williamson and Woodward pleaded guilty; Chambers and Davis pleaded not guilty. Later the sheriff, accompanied by Williams, informed an attorney who presumably had been appointed to defend Davis that Davis wanted his plea of not guilty withdrawn. This was done, and Davis then pleaded guilty. When Chambers was tried, his conviction rested upon his confession and testimony of the other three confessors. The convict guard and the sheriff "were in the Court room sitting down in a seat." And from arrest until sentenced to death, petitioners were never—either in jail or in court—wholly removed from the constant observation, influence, custody and control of those whose persistent pressure brought about the sunrise confessions.

Third. The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history.⁸ However, in view of its historical setting and

⁸There have been long-continued and constantly recurring differences of opinion as to whether general legislative acts regulating the use of property could be invalidated as violating the due process clause of the Fourteenth Amendment. *Munn v. Illinois*, 94 U. S. 113, 125, dissent 136-154; *Chicago, Milwaukee & St. Paul R. Co. v. Minnesota*, 134 U. S. 418, dissent 461-466. And there has been a current of opinion—which this court has declined to adopt in many previous cases—that the Fourteenth Amendment was in-

the wrongs which called it into being, the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter,⁹ to protect, at all times, people charged with or suspected of crime by those holding positions of power and authority. Tyrannical governments had immemorially utilized dictatorial criminal procedure and punishment to make scape goats of the weak, or of helpless political, religious, or racial minorities and those who differed, who would not conform and who resisted tyranny. The instruments of such governments were in the main, two. Conduct, innocent when engaged in, was subsequently made by fiat criminally punishable without legislation. And a liberty loving people won the principle that criminal punishments could not be inflicted save for that which proper legislative action had already by “the law of the land” forbidden when done. But even more was needed. From the popular hatred and abhorrence of illegal confinement, torture and extortion of confessions of violations of the “law of the land” evolved the fundamental idea that no man’s life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power. Thus, as assurance against ancient evils, our country, in order to preserve “the blessings of liberty”, wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed.¹⁰

tended to make secure against State invasion all the rights, privileges and immunities protected from Federal violation by the Bill of Rights (Amendments I to VIII). See, e. g., *Twining v. New Jersey*, 211 U. S. 78, 98-9, Mr. Justice Harlan, dissenting, 114; *Maxwell v. Dow*, 176 U. S. 581, dissent 606; *O’Neill v. Vt.*, 144 U. S. 323, dissent 361; *Palko v. Conn.*, 302 U. S. 319, 325, 326; *Hague v. C. I. O.*, 307 U. S. 496.

⁹Cf. *Weems v. United States*, 217 U. S. 349, 372, 373, and dissent setting out (p. 396) argument of Patrick Henry, 3 Elliot, Debates, 447.

¹⁰As adopted, the Constitution provided, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” (Art. I, Sec. 9.) “No Bill of

The determination to preserve an accused's right to procedural due process sprang in large part from knowledge of the historical truth that the rights and liberties of people accused of crime could not be safely entrusted to secret inquisitorial processes. The testimony of centuries, in governments of varying kinds over populations of different races and beliefs, stood as proof that physical and mental torture and coercion had brought about the tragically unjust sacrifices of some who were the noblest and most useful of their generations. The rack, the thumbscrew, the wheel, solitary confinement, protracted questioning and cross questioning, and other ingenious forms of entrapment of the helpless or unpopular had left their wake of mutilated bodies and shattered minds along the way to the cross, the guillotine, the stake and the hangman's noose. And they who have suffered most from secret and dictatorial proceedings have almost always been the poor, the ignorant, the numerically weak, the friendless, and the powerless.¹¹

This requirement—of conforming to fundamental standards of procedure in criminal trials—was made operative against the States by the Fourteenth Amendment. Where one of several accused had limped into the trial court as a result of admitted

Attainder or ex post facto Law shall be passed" (*Id.*), "No State shall . . . pass any Bill of Attainder, or ex post facto Law. . . ." (*Id.*, Sec. 10), and "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court" (Art. III, Sec. 3). The Bill of Rights (Amend. I to VIII). Cf. Magna Carta, 1297 (25 Edw. 1.); The Petition of Right, 1627 (3 Car. 1, c. 1.); The Habeas Corpus Act, 1640 (16 Car. 1, c. 10.), An Act for [the Regulating] the Privie Councell and for taking away the Court commonly called the Star Chamber; Stat. (1661) 13 Car. 2, Stat. 1, C. 1 (Treason); The Bill of Rights (1688) (1 Will. & Mar. sess. 2, c. 2.); all collected in "Halsbury's Stat. of Eng." (1929) Vol. 3.

¹¹In all third degree cases, it is remarkable to note that the confessions were taken from 'men of humble station in life and of a comparatively low degree of intelligence, and most of them apparently too poor to employ counsel and too friendless to have any one advise them of their rights.' Filamor, "Third Degree Confession", 13 Bombay L. J., 339, 346. "That the third degree is especially used against the poor and uninfluential is asserted by several writers, and confirmed by official informants and judicial decisions." IV National Commission On Law Observance and Enforcement, Reports, (1931) Ch. 3, p. 159. Cf. *Morrison v. Calif.*, 291 U. S. 82, 95.

physical mistreatment inflicted to obtain confessions upon which a jury had returned a verdict of guilty of murder, this Court recently declared, *Brown v. Mississippi*, that "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process."¹²

Here, the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the drag net methods of arrest on suspicion without warrant, and the protracted questioning and cross questioning of these ignorant young colored tenant farmers by State officers and other white citizens, in a fourth floor jail room, where as prisoners they were without friends, advisers or counselors, and under circumstances calculated to break the strongest nerves and the stoutest resistance. Just as our decision in *Brown v. Mississippi* was based upon the fact that the confessions were the result of compulsion, so in the present case, the admitted practices were such as to justify the statement that "The undisputed facts showed that compulsion was applied."¹³

¹²297 U. S. 278, 286.

¹³See *Ziang Sung Wan v. United States*, 266 U. S. 1, 16. The dissenting Judge below noted, 136 Fla. 568, 576; 187 So. 156, 159 that, in a prior appeal of this same case, the Supreme Court of Florida had said: "Even if the jury totally disbelieved the testimony of the petitioners, the testimony of Sheriff Walter Clark, and one or two of the other witnesses introduced by the State, was sufficient to show that these confessions were only made after such constantly repeated and persistent questioning and cross-questioning on the part of the officers and one J. T. Williams, a convict guard, at frequent intervals . . . [while] they were in jail, over a period of about a week, and culminating in an all-night questioning of the petitioners separately in succession, throughout practically all of Saturday night, until confessions had been obtained from all of them, when they were all brought into a room in the jailer's quarters at 6:30 on Sunday morning and made their confessions before the state attorney, the officers, said J. T. Williams, and several disinterested outsiders, the confessions, in the form of questions and answers, being taken down by the court reporter, and then type-written.

"Under the principles laid down in *Nickles v. State*, 90 Fla. 659, 106 So. 497; *Davis v. State*, 90 Fla. 317, 105 So. 843; *Deiterle v. State*, 98 Fla. 739, 124 So. 47; *Mathieu v. State*, 101 Fla. 94, 133 So. 550, these confessions were not legally obtained."

For five days petitioners were subjected to interrogations culminating in Saturday's (May 20th) all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt. The very circumstances surrounding their confinement and their questioning without any formal charges having been brought, were such as to fill petitioners with terror and frightful misgivings.¹⁴ Some were practical strangers in the community; three were arrested in a one-room farm tenant house which was their home; the haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation. From virtually the moment of their arrest until their eventual confessions, they never knew just when any one would be called back to the fourth floor room, and there, surrounded by his accusers and others, interrogated by men who held their very lives—so far as these ignorant petitioners could know—in the balance. The rejection of petitioner Woodward's first "confession", given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which "broke" petitioners' will and rendered them helpless to resist their accusers further. To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol.

We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws.¹⁵ The Constitution proscribes such lawless means irre-

¹⁴Cf. the statement of the Supreme Court of Arkansas, *Bell v. State*, 180 Ark. 79, 89: "This negro boy was taken, on the day after the discovery of the homicide while he was at his usual work, and placed in jail. He had heard them whipping Swain in the jail; he was taken from the jail to the penitentiary at Little Rock and turned over to the warden, Captain Todhunter, who was requested by the sheriff to question him. This Todhunter proceeded to do day after day, an hour at a time. There Bell was, an ignorant country boy surrounded by all of those things that strike terror to the negro heart; . . ." See Münsterberg, *On the Witness Stand*, (1927) 137 *et seq.*

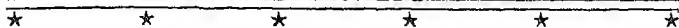
¹⁵The police practices here examined are to some degree widespread throughout our country. See Report of Comm. on Lawless Enforcement of the Law (Amer. Bar Ass'n.) 1 Amer. Journ. of Pol. Sci., 575; Note 43 H. L. R. 617; IV National Commission On Law Observance And Enforcement,

spective of the end. And this argument flouts the basic principle that all people must stand on an equality before the bar of justice in every American court. Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion.

The Supreme Court of Florida was in error and its judgment is

Reversed.

supra, Ch. 2, Sec. 4. Yet our national record for crime detection and criminal law enforcement compares poorly with that of Great Britain where secret interrogation of an accused or suspect is not tolerated. See, Report of Comm. on Lawless Enforcement of the Law, *supra*, 588; 43 H. L. R., *supra*, 618. It has even been suggested that the use of the "third degree" has lowered the esteem in which administration of justice is held by the public and has engendered an attitude of hostility to and unwillingness to cooperate with the police on the part of many people. See, IV National Commission, etc., *supra*, p. 190. And, after scholarly investigation, the conclusion has been reached "that such methods, aside from their brutality, tend in the long run to defeat their own purpose; they encourage inefficiency on the part of the police." Glueck, *Crime and Justice*, (1936) 76. See IV National Commission, etc., *supra*, 5; cf. 4 Wigmore, *Evidence*, (2d ed.) § 2251. The requirement that an accused be brought promptly before a magistrate has been sought by some as a solution to the problem of fostering law enforcement without sacrificing the liberties and procedural rights of the individual. 2, Wig., *supra*, § 851, IV National Commission, etc., *supra*, 5.



Chapter IX

American Interpretations of Liberty as Economic Laissez Faire

DURING a long period in American history—from about 1868 to 1933—a powerful idea developed and flourished in American political thought. It was the idea that rights of property guaranteed by the Constitution of the United States amount in substance to the rights claimed for property under the theory of economic laissez faire. In effect this theory meant that government has no right or power to interfere with ownership of property or the way property owners use their property and their incomes from it; the primary duty of the government is to keep order for property owners and to abstain from any intervention in their affairs in the name of general welfare or social good. Although this idea appeared in France in the eighteenth century, it was not reduced to a complete system in the English-speaking world until about the middle of the nineteenth century. Herbert Spencer summarized it in his *Social Statics*.

Quickly taken up by American lawyers as an object of ardent desire, the idea was read into the Constitution of the United States. Thus that document was made an embodiment of the idea of economic laissez faire. There were exceptions and protests as this process of interpretation went on, but by the opening of the twentieth century things had gone so far that Justice Oliver Wendell Holmes was moved to object when the Supreme Court, in the name of liberty,

declared invalid a New York statute fixing sixty hours a week or ten hours a day as the rule for workmen employed in bakeries. In his dissent, Justice Holmes exclaimed significantly: "The Fourteenth Amendment does not enact Mr. Herbert Spencer's *Social Statics*." How did this state of affairs come about? To this question the following pages are devoted.

Sources of Economic Laissez Faire

Whatever the line of emphasis between economic laissez faire and cultural laissez faire, it is certain that the former has two prime sources of origin. It is certain that in Europe the rising manufacturing and commercial bourgeoisie promoted the casting off of the mercantile and guild limitations that had long been imposed on business enterprise. Yet the spokesmen of agriculture were as prominent as the spokesmen of business enterprise in the growing insistence upon nonintervention in economy by the state. It is equally certain that the new bourgeois did not go the whole way in applying the logic of their creed. They accepted as basic and untouchable their rights of private property, as developed in the previous ages of mercantilism and state control over economic enterprise, although they stripped the crown, the aristocracy, and the clergy of many vested rights in property. At the same time these sponsors of laissez faire called upon the state to provide intervention in the form of armies and navies to advance commercial interests abroad and to furnish police protection for their property rights at home. This form of laissez faire Thomas Carlyle characterized correctly and picturesquely as "anarchy plus the police constable."

However crass may have been some aspects of the creed, its spokesmen insisted that practice under it would bring the utmost prosperity for all at home and peace among nations abroad. Laissez faire was in fact accompanied by,

if it did not entirely produce, an extraordinary upswing in the creation of wealth; and, as compared with eighteenth- or seventeenth-century conditions, a noteworthy rise in general standards of living. Some of the new industrial horrors were bad enough and the promised utopia was by no means realized—perhaps no balance sheet can be struck—but that *laissez faire* was associated with an enormous increase in productive energies can scarcely be denied. In any case, it is unprofitable to quarrel with the history of that age.

Another source of *laissez faire*, as economic philosophy, was anarchy—the doctrine of no state interference with culture and economy and, indeed, no state to interfere with them. Even within this source, however, are divisions of conception, along with agreement that the state must be abolished. There is the anarchy of the strong who say: "Take away the state and let us fight for life and property, giving the palms to the victors." But this type of anarchy does not bulk large in the history of the conception. The second type may be called utopian anarchy by gradualism: with the moral improvement of human beings and social living the state should and will disappear and with its disappearance, all coercion by physical force. It was early represented in the United States by Josiah Warren and his school of philosophical anarchists. If apparently negligible in direct effect, Warren doubtless had a profound influence on social philosophers of his time and later days. Many who did not go all the way with him borrowed heavily from his writings.

The third type of anarchy may be characterized as revolutionary anarchy to be followed by utopia, perhaps communistic in nature. The great European exponent of this doctrine was Michael Bakunin, the Russian firebrand of the Victorian Age. For him the state was personified in the tsar, sustained by the whole military, burcaucratic, and clerical apparatus, and he could see no way of abolishing such state interference except by revolutionary violence. Naturally

the appeal of this philosophy was more direct and effective in the countries of Eastern and Southern Europe, where despotisms analogous to that in Russia generally prevailed. And as democracy made headway, revolutionary anarchy declined in force and in the number of its adherents. But the doctrine had its influence on Marxian socialism. As Marx and Bakunin both appealed to the masses of people, peasants and industrial workers, they were drawn together in their antagonism to the state and to some extent in their philosophy.

Their prime difference lay in their immediate hopes and prognostications. Bakunin believed that shortly after "the overthrow of the state," the ideal order of anarchy would come into being. Marx, on the other hand, prophesied a dictatorship of the proletariat on the morning after the revolution; proletarian power would take the place of bourgeois power; in time the state would "wither away"; then would come "the spring into freedom," state coercion would disappear, and social peace reign throughout the world. This may be called utopian anarchy by the route of revolutionary violence, dictatorship, and communism. With such strange bedfellows of thought is associated the conception of *laissez faire* in culture and economy. The Warrens, Cobdens, Bakunins, and Marxists were all to arrive at last in the kingdom of an economic heaven.

On the heritage of ideas which constitute today American public policies with respect to *laissez faire* and government intervention in economy, the continental thought of Bakunin and Marx has exerted little discernible influence. Indeed, as far as continental thought is concerned, it was the thought of German cameralism and state socialism of the chair that made the deepest impression on economic philosophy in the United States, especially of the academic variety; and cameralism and state socialism meant elaborate forms of government intervention in what are called "normal" economic relations. Owing to linguistic and cultural affiliations,

however, it was British speculation that gave positive and significant directions to American economic and social thinking, if not to economic practice. Even so, the "reception" accorded to British thought in America was by no means complete, save in the writings of some professional economists whose views never did and do not now correspond with a high degree of exactness to the realism of American practice.

Although Adam Smith had published his *Wealth of Nations* in 1776, his ideas received a tardy welcome in the United States. From one point of view, he seemed to offer economic doctrines in keeping with the rights of man. He opposed corporations and special privileges and declared that every man knew his own interests, at least better than statesmen could know them. He proposed to allow every man to employ his capital and talents in his own way, with a minimum of government intervention, and promised that, under "the invisible hand" of Providence, the result would be general good. The old nexus of class, state, church, and family was rejected and the cash nexus substituted as the binding force in human relations, at all events, in the main. While Adam Smith took policies of state into account and recognized the place of national interest in economic affairs, his emphasis was on individuals and their economic activities in their own behalf. It was not, however, until David Ricardo and Herbert Spencer sacrificed the realism of Adam Smith to an assumed perfection of logic, that the system of "anarchy plus the police constable" found extensive lodgment in American minds. If any American thinkers in the closing years of the eighteenth century saw in Adam Smith's *Wealth of Nations* an economic program for the rights of man, they were not able at the moment to make much impress on practice.

American Ideas of Laissez Faire

It was not to Adam Smith that early American statesmen turned for guidance in public policy. They had protested violently against certain British restrictions on American trade with other countries and had demanded more freedom to sell and buy where they could to their own advantage. Yet they had not repudiated all mercantilist ideas of commercial policy or completely rejected all forms of government intervention in the direction and promotion of commerce. Even village statesmen who opposed the creation of a strong national government and federal intervention in the course of economic affairs usually supported various forms of intervention by state and local governments. There were state tariffs before there were federal tariffs. States chartered commercial corporations. States granted bounties and subsidies.

Nor did these local statesmen abandon all types of economic intervention when the Constitution was adopted. Some forms of intervention were transferred to the new national government, while the states retained and developed others. In short economic laissez faire was not assimilated by the Fathers to the rights of man. Nor did it become official policy in the eighteenth century. Not even Jefferson, who used some phrases which lent sanction to the creed, followed it in practice. His messages as president constantly invoked the use of federal power for the advancement of economic and cultural interests. If he helped to break up great landed estates in Virginia and to destroy the aristocratic nexus there, he sought to establish public education and founded the University of Virginia. Whatever theories he may have held, Jefferson's practice often ran counter to the rules of laissez faire.

The majority of the men who framed and put into effect the Constitution of the United States did not identify the

federal government with the theory and practice of *laissez faire*. Far from it. If they were familiar with the creed, they did not embrace it wholeheartedly. Their philosophy of the state was in the main mercantilism—the philosophy which had long marked the policy of the British government against which they had revolted. In revolting, they did not discard the philosophy. The liberty that they asserted was not the liberty of untrammelled individualism in economy. It was the liberty to use the power of government in American interests as distinguished from British interests. The Constitution framed by their hands conferred upon the federal government powers over taxation and commerce to be employed in the promotion and regulation of economic enterprises.

In the early sessions of Congress held under the Constitution, many members of the Constitutional Convention served as senators and representatives. The first president, Washington, had presided over that convention. In his first message to Congress, he recommended legislation designed to promote commerce, industry, agriculture, natural science, and education. To his recommendations Congress later responded in part by enacting laws protecting and encouraging domestic industry, shipping, commerce, and business enterprise. In letter and spirit, this legislation ran directly contrary to the strict theory and practice of *laissez faire*. Thus precedents were set by the Federalists for the use of popular government for economic and cultural ends.

That phase of the American economic tradition, represented by the first Republican party, also presents conceptions relative to the *laissez-faire* policy. Thomas Jefferson, called the founder of the party, has been claimed as the philosophic exponent of the *laissez-faire* creed for America. To some extent, and in theory, the claim is well founded.

Jefferson regarded Adam Smith's *Wealth of Nations* as the best treatise on economics, but he added, "descending from theory to practice there is no better book than the *Federalist*" on the subject of government. He likewise commended J. B. Say's *Political Economy* in which laissez faire was exalted to a controlling principle of policy. The work of Say he regarded as "more lucid," perhaps on account of its relative brevity. Jefferson also lent his name as sponsor to the publication of Destutt de Tracy's *Treatise on Political Economy*, in 1817, a treatise which had won the commendation of Ricardo. In his first inaugural Jefferson made the statement so often quoted as lending complete sanction to the doctrine of laissez faire: "A wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities."

Undoubtedly these words stand as written. But there is no warrant in facts for taking them out of the context of Jefferson's whole social and economic philosophy and making them mean unconditional laissez faire as understood and applied by the Manchester school to an industrial society with a huge urban proletariat. In 1801 American society was overwhelmingly agrarian; and a society of farmers and mechanics represented Jefferson's conception of the ideal. At one time he passionately advocated keeping workshops and "the mobs of great cities" in Europe, forever out of the United States. Although later he accepted the idea of promoting industries in this country, he did not contemplate with pleasure allowing industrial capitalism to become predominant in American economy.

As Adam Smith wrote of a society mainly handicraft and agricultural, so Jefferson shaped his policy to such an order

of production and distribution. To say, as did James Parton, the biographer of Andrew Jackson, that Jefferson would have approved with delight Herbert Spencer's *Social Statics*, had he lived to read it, is to make a statement that cannot be proved. It is one thing to contend that laissez faire is, on the whole, sound policy for a simple society composed largely of freehold farmers and small-town mechanics; it is something entirely different to say that laissez faire is sound policy for a country composed largely of tenants, share croppers, farm laborers, industrial workers, urban middle classes, and a plutocracy. The very thought of such a society was abhorrent to Jefferson. He believed that it could not endure. How he would have shaped his economic policy and applied it to such an economic order there is no way of knowing. Does this system "take from the mouth of labor the bread it has earned"?

Nor did Jefferson or his party in practice follow strictly the creed of laissez faire as implied in his inaugural address. On the contrary he advocated and promoted a system of public education supported by taxation. He endorsed the continuance of the protective tariff. With his approval Secretary of the Treasury Albert Gallatin prepared a grand plan for the improvement of waterways and communications by federal action. During Jefferson's administration Congress authorized the construction of a national highway, and work was begun on the project under his auspices. Indeed, in the very address which spoke of leaving men free to regulate their own pursuits of industry and improvement, Jefferson commended "the encouragement of agriculture, and of commerce as its handmaid." When a fair balance is made of the measures of Congress enacted between 1801 and 1829, the year of Jackson's inauguration, it becomes evident that the weight of Republican practice was on the side of government intervention with the pursuits of men rather than on the side of enlarging their "freedom."

Likewise in practice Jefferson himself departed from the preliminary assumptions of the English school of laissez faire. Unlike them, he did not assume that the existing system of inheritance and alienation as applied to property must be accepted as "natural" or eternal. On the contrary, he attacked the whole scheme of primogeniture in Virginia and drafted laws designed to effect a diffusion of landed property. To identify the economic "liberty" of Jefferson with the laissez faire of Manchesterism is to distort his entire philosophy of society. This is not to say that he would have been a collectivist in 1941. What he would have been had he lived through the Industrial Revolution in America nobody knows, and any such speculation is idle and irrelevant to the purpose of this analysis. The economic liberty of Jefferson was the economic liberty of a freehold and handicraft society in which property was widely diffused, and opportunity for "free land" in the West was still wide open. It was not Manchesterism for a Manchester.

Not until the eve of the Civil War was Jefferson's economic liberty for an agricultural and handicraft society transformed into a complete system of laissez faire—in theory. In the third volume of his biography of Andrew Jackson, Parton made Jeffersonian liberty mean exactly what Herbert Spencer's *Social Statics* meant for English millowners. Parton was English by birth, though educated in the United States, and he spent the year 1842 in England, where he collected an inheritance. Thoroughly inoculated with the laissez faire of his original home, Parton made a complete transference of thought. "The party who hold to the Jeffersonian creed," he said, "are of the opinion that the office of government is solely to maintain justice between man and man, and between the nation and other nations. It should have nothing to do with carrying letters, supporting schools, digging canals, constructing railroads, or establishing scientific institutions. Its business is simply to sup-

press villains, foreign and domestic. The people are to be left absolutely free to work out their own welfare in their own way; free, especially in all departments of industry, from the paralysing touch of government patronage."

Under this theory, Parton continued, government would not reward inventors, authors, and artists; it would not establish and support schools; it would not found a national banking system; it would not regulate railway rates and services; it would not foster the construction of a Pacific railway; it would leave everything to "a great people." The theory, Parton adds, was "incompletely set forth in the writings of Mr. Jefferson," but recently elaborated by Herbert Spencer in his *Social Statics*—a work which "will be a school book among us some day."

Although Parton admitted the truth that Jefferson's theory was incomplete and that practice had not conformed to its terms, his thesis had a powerful support when issued in 1860. By that time, leadership in the Democratic party had passed largely into the hands of the planting class of the South, despite the challenges from the Western agrarian wing. By that time members of the planting class, as producers of raw materials, had come to conceive clearly their interests in terms of laissez faire all around (subject to state protection of their property), and their spokesmen among statesmen, editors, professors, and Southern intellectuals had perfected the argument. As planting labor was supplied by slaves, there was little or no demand for social and labor legislation in the South. Producing raw materials for export, planters had little or no need for protection against foreign competition. As shippers they desired low freight rates and hence wanted no subsidies or favors bestowed upon American shipping. In other words, exporting planters and farmers were somewhat in the position of British millowners, in that, given their favorable position in the world market, they

needed no "paternalism" of any kind. Economic laissez faire seemed to be to their immediate advantage.

By 1850 the Democratic party, in the national sphere, had brought national policy and action almost to the very edge of domestic laissez faire and free trade. Its principal form of federal intervention was a drastic fugitive slave act, employing the engines of the federal government to ensure the return of runaway laborers. Meanwhile, importing merchants and brokers, in the cities, saw that free trade was calculated to enlarge the volume of exports and imports and that laissez faire was thus an economic theory consonant with their interests. Hence the peculiar outcome in the United States—laissez faire as a creed for agriculture in general and planting in particular, as distinguished from laissez faire in England as a millowners' creed. Here it was industrialists who invoked government intervention—to any extent dictated by their conception of their interests.

For a long time after the Civil War, Parton's formulation of laissez faire as a creed practically identical with Spencer's *Social Statics* was an article of faith in a large section of the Democratic party. Echoes of industrial strife were heard, but they had little effect on the avowed policy of that party. Grover Cleveland, the first Democratic president after 1861, espoused it, and in 1887 he had the courage to apply it even to the tariff, by condemning protection as a form of legalized exploitation and demanding a reform. His attorney general, Richard Olney, accepted the faith as a railway lawyer, but he supported one form of government action by urging the use of federal troops in the Pullman strike of 1894. The *New Freedom* of Woodrow Wilson was at bottom the *Social Statics* of Spencer, with modifications in practice by concessions to labor and social legislation. Extensive as were these concessions, however, they were mere fringes, not fundamentals, in Wilson's economic philosophy. During his early years, indeed until he became a candidate for governor of

New Jersey, Wilson's teachings and writings had assumed the essential validity of the laissez-faire creed. Even interventionism, if allowed, was to improve the smooth working of laissez faire, not in the interest of permanent "paternalism." The agrarian Populism that demanded such changes as government ownership of railways, Wilson had early rejected as a kind of social frenzy, even though he found it politically expedient later to take William Jennings Bryan into his cabinet.

Owing to the continuity of historical development, many if not all the precedents set by the early Federalists, and more besides, are incorporated in present theory and practice. The Whig party, which succeeded the Federalists, accepted their conception of government and incorporated their philosophy in legislation and administration whenever in power. Then the second or present Republican party, made up by a combination of Whigs and anti-slavery Democrats, carried forward Federalist-Whig policies into the contemporary scene, with some distinctions. These distinctions are noteworthy. The second Republican party does not and has not represented the broad cultural interests displayed by a Washington or a John Quincy Adams. Its policy in the national theater has been more purely economic, and less concerned with the advancement of science, literature, and the arts. At all events practice under Republican theory has been far from complete laissez faire in economy. It has been a one-sided laissez faire in any case. It has employed government intervention in the form of protective tariffs, bounties, subsidies, land grants, and loans, all for the purpose of modifying the "normal" or "natural" state of things and giving positive direction to industrial and commercial enterprise and to the distribution of wealth in American society.

While employing government intervention on a vast scale, with momentous consequences, the second Republican party early insisted upon laissez faire and individualism in other spheres, especially in respect of the regulation of business enterprise and social legislation. Often its actions illustrated the old adage: "Anarchy for ourselves and propriety for others." Not only has the Republican party represented this one-sided system of laissez faire in legislation and administration; intimately associated with its development has been the use of the federal judiciary to establish and definitize what Professor John W. Burgess called "the sphere of anarchy" under the Constitution—a sphere or twilight zone in which neither federal nor state authorities can employ the agencies of government for public purposes, real or alleged, to interfere with private enterprise. In any case Republican theory and practice have not been and are not now pure laissez faire of the Cobden-Bright variety. In the beginning, Republicans rejected that type of noninterventionism, and accepted government interference for extensive and given purposes. Thus their actions raised a fateful and invidious question: "Whose purposes?" When the perfection of logic was cast off by partial acquiescence in state interventionism, and matters of degree were adopted as the rule, the issue of the degree and the immediate beneficiaries becomes paramount. If the federal government can protect manufacturers under economic theory and constitutional law, why not laborers under the same sigus? Judicial speculations made fine distinctions, but the lay public remained largely unconvinced.

While in the main, in respect of the federal policies, such has been the Republican tradition incorporated in the heritage of current thought, a caveat must be entered. Extensive studies of voting in Congress and the state legislatures reveal no clear-cut division between Republicans and Democrats in matters of social legislation which represent forms of in-

terventionism. Moreover, states long regarded as Republican strongholds were early among the most advanced in all types of legislation and administration interfering with business enterprise in the interest of the general public, wage earners, and those driven to the wall in the competitive struggle of individuals. It has been claimed that the "most extensive and enlightened" social legislation before 1933 must be ascribed to Republican origins, and indeed such fragmentary studies as we now have indicate that the claim is justified. Whatever a final balance will show, it remains a fact that, despite the theories of laissez faire associated with Republicanism, in matters of social legislation, practices do not fully correspond to the dogma.

In the American tradition, therefore, the configuration of economic laissez faire lay across the two major political parties which divided the affections and allegiances of the voters. It did not cut clearly between them. Republican policy emphasized laissez faire in domestic policies, except so far as bounties, subsidies, land grants, and financial aids were found advantageous to the beneficiaries. In the domain of foreign commerce it meant any use of government intervention, no matter how extensive, for the purpose of protecting and promoting domestic industries against foreign competition. On the other side Democratic policy meant, in theory rather than practice, a general laissez faire—in domestic economy and in foreign commerce. To be sure, in 1928, the Democrats completely surrendered their old demand for tariff for revenue only, but by that time the country was on the eve of a convulsion in economy and thought.

So it came about that millions of people in both parties were thoroughly inoculated by the theory of laissez faire, ranging from the one-sided system of the Republicans to the general application of the system cherished by a diminishing number of Democrats. Through party propaganda and partisan speeches large fragments of the creed were

lodged in the minds of millions who knew little about systems of economic "science" but could reiterate slogans in high places and low. Of such thought was the American economic tradition largely composed, at least for a multitude of persons in both parties.

Scholars Canonize Laissez Faire

While the politicians were paying oratorical tributes to liberty and laissez faire, one school of academicians was tearing Economy away from its old Political affiliation and making a "science" of Economics and another school was tearing Politics away from Economy and erecting a political "science." This powerful movement culminated in an institutional stereotype about 1880 with the establishment of the School of Political Science at Columbia University, in New York City, the economic and literary capital of the nation. The program of instruction soon came to include economics, sociology, history, political theory, and other subdivisions of the kind, but no political economy was taught in any division or department. Economists went their way and, for more than thirty crucial years, John William Burgess, as head of the School, expounded a body of theories and facts which he called Political Science and Comparative Constitutional Law. Under his direction thousands of young lawyers and graduate students were trained in this type of political science and led to believe that it was indeed a science—of some kind and validity.

In 1890-91, Burgess published a treatise on government, called *Political Science and Comparative Constitutional Law*. The subtitles were significant. The first volume dealt with "sovereignty and liberty" and the second with "government." Part I of the first volume is called "Political Science." It is throughout highly theoretical. Geography is mentioned, but there is not a reference to the nature and influence of

economic classes and interests. The world, including the United States, is full of abstract personalities, apparently engaged in no callings, occupations, or pursuits and possessing no kinds and degrees of property. The inspiration of political actions and forms, Burgess finds in the "political genius" of "Teutonic peoples." They alone have produced the national state and are equipped to lead and dominate in the political organization of the world. The law of governments Burgess summarizes, with reference to forms and procedures, but the functions of governments in fact are left entirely out of the picture. Political parties and the interests they reflect are ignored. Apparently they do not exist for this kind of "political science." The ultimate end of the state is, for Burgess, as abstract as the kingdom of heaven: "We may call it the perfection of humanity; the civilization of the world; the perfect development of human reason, and its attainment to universal command over individualism; the apotheosis of man. This end is wholly spiritual; and in it mankind, as spirit, triumphs over all fleshly weakness, error, and sin."

But the immediate ends of the state, according to Burgess, are to maintain law and order, through government, and to protect "the domain of individual liberty." A large part of the first volume is devoted to "civil liberty," to laying out a "sphere of anarchy" which cannot be invaded by any government in the United States, federal or state. This is the area which was later called "no man's land," as if it had just been discovered; whereas in fact Burgess, more than thirty years before, had expounded the Constitution as creating this realm which no government could invade. Besides referring to historic personal liberties, such as freedom of press, speech, and religious worship, Burgess lays great emphasis on the Fourteenth Amendment and interprets it to mean the exclusion of state governments from a broad domain of social legislation.

In other words, Burgess practically writes *laissez faire* into the "due process clause" of that amendment. He attacks the narrow interpretation placed upon the amendment by the Supreme Court in 1872 (16 Wallace, 36), declares the opinion of the Court to be "entirely erroneous," and gives his support to the views expressed by Justice Field in his dissenting opinion. In his classroom, though not in his book, Burgess taught that the true function of the Fifth and Fourteenth amendments is to prevent the encroachment of socialistic legislation upon private rights; and he lived to see the Supreme Court, with changes in personnel, reverse the opinion of 1872 and assume power under the Fourteenth Amendment to invalidate every kind of state legislation touching the vested rights of property. Through the education of young lawyers he helped to bring about the consummation which he so devoutly wished, and while still in his chair he saw the Supreme Court, in the *Lochner* case in 1906, read Herbert Spencer's *Social Statics* into the Fourteenth Amendment, to use the expression of Justice Holmes in his dissenting opinion.

All this Burgess did in the name of political "science." He had before him the records of the federal convention, which revealed a profound recognition of economic interests in politics; he chose to refrain from mentioning them. He had before him the *Federalist*, which coupled economic interests and politics as forever inseparable; he chose to ignore this fact. He had before him the speeches of Webster, Calhoun, and Seward, who kept economic interests at the very center of thought about political practice; he chose to ignore these evidences from distinguished American statesmen. The only economic interest which he recognized was that of labor coming under the guise of what he called, "socialistic legislation"; against that he placed the legal barrier of the Constitution and its amendments. This was the supreme contribution of the most distinguished "political scientist" of the

Gilded Age. And his services to practical interests engaged in beating down railway regulation and other forms of government intervention with "liberty" were fully appreciated by eminent members of the bench and bar.

Following the example of Burgess, though seldom displaying his practical insight into the nature of their work, many young political scientists developed the "science" of government into a description of legal formalities. They analyzed statutes and constitutions, decisions of the courts, administrative practices, and legislation pertaining to the machinery of government. By the opening years of the twentieth century American political science had become mainly a description of the machinery of government—the election, powers, and legal rights of public authorities. The actual functions of government were almost entirely ignored. The economic interests pressing for and pressing against the nomination and election of candidates, for and against certain types of legislation and judicial decisions, were likewise ignored, or treated so meagerly as to appear unreal. In other words, political science became formalistic, legalistic, and shadowy. And this happened in the academic world, strange to say, in the age of terrific party battles, such as the campaign of 1896, when every practical politician was proclaiming from the housetops the hopes or menaces of economic interests. To find anything comparable in the history of thought it is necessary to go back to the age of Erasmus. On the positive side this political science was formalistic; on the negative side, as far as it was anything, it was economic laissez faire, until the twentieth century was well advanced.

This formalistic and legalistic tendency in political science is all the more baffling when it is remembered that James Bryce, in his *American Commonwealth* published in 1888, declared that "in America the great moving forces are the parties," and devoted a large part of his second volume to this subject. Justly he could say "no native American has

essayed the task of describing the party system of his country." Yet even Bryce, although he referred in passing to occasional economic interests, found the source of party divisions in abstractions—in "the opposition between a centralized or unitary and a federalized system," and in the opposition between the freedom of the individual and the "checking and regulating" impulses, between liberty and order. If he was aware that economic interests were associated with centralization and state rights, with *laissez faire* and regulation, Bryce failed to develop the subject. Hence, while he was laying before political scientists the anatomy and methods of political parties, he did nothing to reunite politics and economics which had been torn apart by the academicians. He warned Americans that "the power of groups of men organized by incorporation as joint-stock companies, or small knots of rich men acting in combination, has developed with unexpected strength in unexpected ways, overshadowing individuals and even communities, and showing that the very freedom of association which men sought to secure by law . . . may, under the shelter of the law, ripen into a new form of tyranny." But he did not apply the idea, and the political scientists who in time followed Bryce refrained from bringing this fact firmly and insistently within their conception of their "science."

With *laissez faire* openly celebrated in textbooks on economics, such as J. L. Laughlin's edition of John Stuart Mill, and accepted as a presupposition by political science, it was only natural that it should be identified with the forms and purposes of law—public and private in the same period of time. And so it was. It took the form of vested rights which could not be touched adversely or diminished by legislative action, and the state and federal constitutions were made to supply the sanction. As a matter of fact, there is no doubt

that the original federal Constitution and the first ten amendments contained some provisions designed to limit the power of the federal government and of the state governments to encroach upon the rights of property. For example, there is the provision that no state shall make or enforce any law impairing the obligation of contracts and to this was added the Fifth Amendment, forbidding Congress to deprive any person of life, liberty, or property without due process of law.

Under Chief Justice Marshall the Supreme Court sought to interpret the restrictive provisions in such a manner as to place certain vested rights forever beyond the reach of state legislatures—to write a certain amount of economic *laissez faire* into the Constitution, as far as the states were concerned; and the domain of property law was largely under the control of the states. But Marshall died. New justices belonging to the school of Jacksonian democracy succeeded the justices of Marshall's school, and between 1835 and 1860 the Supreme Court reversed the trend and allowed to state legislatures powers which had been denied to them under the Constitution by the Court during Marshall's regime. By 1860 state legislatures were interfering with vested rights in various ways; they were emitting paper money by subterfuge, regulating and taxing corporations, building canals, and otherwise intervening in economic transactions, especially under agrarian impulses, despite the theory of *laissez faire* proclaimed by politicians (above, page 129).

Effect of Laissez Faire on Legislation and Law

So things stood in 1868 when the Fourteenth Amendment was adopted, by the application of military pressure on Southern states. This amendment provided that no state could deprive any person of life, liberty, or property without due process of law. The provision in question was drawn by

John A. Bingham, a member of the House of Representatives, and it was his intention to extend this protection to all persons, not merely to the newly emancipated bondmen of the South. As a lawyer, he was doubtless familiar with state intervention in corporate affairs.

Nevertheless the Supreme Court, under the control of justices educated in ante-bellum days and interested especially in the problems left by the Civil War, at first interpreted the amendment in a strict manner as applying mainly to the rights of Negro freedmen. It took this view in 1872 in a Louisiana case affecting property rights, and again in 1876 when it declared that, in spite of the amendment, state legislatures had the right to regulate the rates of concerns affected with public interest. At that time the Court said that the determination of the reasonableness of rates was a legislative, not a judicial function. Moreover, at first, the Supreme Court did not clearly say that the term "person," used in the amendment, covered corporations or artificial persons, as well as natural persons. In short, at the outset, the Supreme Court flatly refused to interpret the Fourteenth Amendment as enacting economic laissez faire into law and as conferring upon the Supreme Court the power to strike down all forms of state intervention deemed incompatible with the Constitution by the particular justices occupying the bench at the particular moment. Advocates of such laissez faire, therefore, had to "educate" the Court and see that the right kind of justices were appointed to membership.

This process of education was soon begun. Indeed in 1868, the year which witnessed the adoption of the Fourteenth Amendment, Thomas M. Cooley published a commentary on American law bearing the highly significant, if not ominous title, *Constitutional Limitations*. It emphasized not the powers of state governments, but their powerlessness, their lack of authority or sanction for interfering with vested rights. With great ingenuity Cooley assembled provisions

and features of state constitutions for the purpose of showing that in letter and spirit they were designed to limit state governments, not to endow them with power. Then he expounded the phrase "due process" to mean positive restrictions upon the power of governments to encroach upon vested rights, with emphasis upon rights of property as distinguished from rights of persons. In particular he came to the defense of railway corporations against state taxation and regulation. In the first edition Cooley did not have the advantage of the Fourteenth Amendment as an additional restriction on state powers, but this new feature was covered in subsequent editions.

In the course of time Cooley's *Constitutional Limitations* became a textbook for law students, lawyers, and judges. Although it rested upon many curious perversions of history and upon notions of a "higher law" above positive law, it also had substantial support in the growing limitations on legislative power imposed by the states themselves. However that may be, its creed of economic laissez faire as constitutional limitations, accompanied by the contention that the courts (not popular assemblies) were the proper guardians against infractions of the creed, was soon written into the law of the land by lawyers, judges, and teachers in law schools. To question the authority of Cooley in 1890 in any assembly of lawyers was almost equivalent to denying the authority of the Holy Writ in an assembly of clergymen.

In fact at Columbia University the whole gospel of constitutional limitations, espoused and elaborated by John W. Burgess, was long taught in the Law School as constitutional law by Burgess himself. It was a fixed part of his program to indoctrinate rising lawyers with the creed, and for this reason he insisted upon a close affiliation of the School of Political Science and the Law School. In the last chapter of his *Political Science and Comparative Constitutional Law*, he expressed, as the deliberate judgment of "the American

people," the doctrine "that law must rest upon justice and reason, that the Constitution is a more ultimate formulation of the fundamental principles of justice and reason than mere legislative acts, and that the judiciary is a better interpreter of those fundamental principles than the legislature—it is this consciousness which has given such authority to the interpretation of the Constitution by the Supreme Court." Thus the constitutional limitations are identified with *laissez faire*; this is justice and reason; and the Supreme Court is a "better" interpreter of the limitations than is the legislature.

How did this state of affairs come about? Burgess answers. Consciousness of the contention that law rests upon justice and reason, and that the Supreme Court is the "better" interpreter, "has been awakened and developed by the fact that the political education of the people has been directed by jurists rather than by warriors and priests; and it is the reflex influence of this education that upholds and sustains, in the United States, the aristocracy of the robe." From the ultimate Burgess did not shrink. "I do not hesitate to call the governmental system of the United States the aristocracy of the robe; and I do not hesitate to pronounce this the truest aristocracy for the purposes of government which the world has yet produced."

Having proclaimed the merits and sovereignty of this aristocracy, Burgess warned lawyers and teachers of law against regarding the law "as an industry," against the perils that lay in divesting themselves "of their great spiritual power over the consciousness of the people." He did not believe that the aristocracy of the robe could continue to rule and enforce constitutional limitations just because it happened then to be in power. To retain its sovereignty over the legislature, "especially under universal suffrage," it must "appreciate its position," and "preserve the ideal source of its power."

The influence of Burgess was certainly wide. How wide there is no way of discovering. But the Constitution as limitations, limitations as economic laissez faire, and judges as sovereign in prescribing limitations in concrete cases—this system of faith became the generally prevailing scheme and cast of thought in legal education, legal ideology, and juristic speculation by the close of the nineteenth century. Political science had been separated from economics, and the central dogma of economics had been made the secret wish and the proclaimed faith of political science and law. In the long history of intellectual involutions there is scarcely anything comparable to this conjuncture of ideas and sublimated interests.

While economists were breaking away from society and government and concentrating on the activities of a fictitious economic man, while political scientists were discarding economics and concentrating on an equally fictitious political man, while lawyers were identifying constitutional law with limitations and laissez faire, historians were also going their own way. They turned their attention mainly to political and military events. The fullness of cultural history included all that the economists, political scientists, and lawyers had insisted upon ignoring, but historians avoided extending the scope of their inquiries to the borders of their subject matter. They wrote political and constitutional histories of the United States in terms of political abstractions—parties, personalities, election, statutes, judicial decisions, and diplomatic policies. If they were aware of the fact that associated with all these abstractions were economic interests, they betrayed little sign of recognition. They studied the original sources; or were presumed to do this. They must have seen in the records of the Constitutional Convention of 1787 repeated expositions of the intimate relations

of economics and politics; they must have read the *Federalist*, the speeches of Gouverneur Morris, Fisher Ames, Webster, Calhoun, and Seward, in which economic interests appeared at the very center of political thought. Yet in their historical writings they made American history consist largely of an apparently fortuitous concatenation of politicians and parties.

How did this happen? The answer is not clear. To some extent, however, this type of unrealistic historical writing was due to the influence of German historiography. Before the rise of graduate schools, many American scholars studied in Germany and took doctorates in German universities. There they came under the influence of Leopold von Ranke, the outstanding leader of German historical thought and practice. Ranke had confined his view mainly to political and diplomatic events. He had claimed to put aside political and social biases, and to write history as it "actually had been." This was supposed to be "scientific" history. Whoever worked and wrote in this style was accounted scientific; this is, his work was regarded as akin to that of the natural scientist who described things, such as the courses of the stars, exactly as they are.

Historians working under this hypothesis apparently imagined that they had expelled from their minds all the deep and subtle influences of their social and economic experiences and affiliations and that they saw the "data" of history objectively. They were apparently oblivious to the fact that Ranke, the high priest of their craft, had also been a high priest of the counterrevolution in Europe and a member of the German state educational bureaucracy. He had seen the havoc wrought in the old order by the revolutionary writers of the Enlightenment, and, desiring peace for the Restoration, had deliberately avoided the controversial in history, as if history were not a record of controversies, conflicts, and revolutions.

Whatever American scholars thought about Ranke or their craft between 1865 and 1900, their writings were dry, formal, and political. Unwittingly, perhaps, they contributed to the advancement of political science as a body of abstractions and descriptions pertaining to the machinery of government. By ignoring generally the economic and cultural aspects of history, they gave a freer rein to the economists who devoted their energies to the fictitious economic man and the philosophy of laissez faire.

If the influence of most academic historians was negative as to the development of laissez faire, and lent only indirect support to the dogma, there were some contributions on the positive side. Historians of the Constitution early came under the influence of Coolcy's scheme of emphasis on limitations, as distinguished from powers; and writings on constitutional history, besides being dry and abstract, generally gave some countenance to the new fiction of constitutional law as laissez faire. The class conflicts under Jefferson, Jackson, and Lincoln were either neglected or glossed as unfortunate incidents in an otherwise perfect order. Although historians as a rule seemed unconscious of the fact that economic philosophy had an intimate relation to the operations of their craft, one of their guild, Hermann Eduard von Holst, author of the *Constitutional History of the United States* and professor in Chicago University from 1892 to 1900, was an open defender of the faith. As Erich Goldman, a student of von Holst's historical conceptions and methods, had said, von Holst "tended to interpret laissez faire in its most reactionary form." The first volume of von Holst's history was translated from the German in 1876, the translation being completed in 1892. The German and English editions were greeted by American scholars, especially in the North with almost fulsome praise. In 1889 it was called by Charles K. Adams "unquestionably the ablest work that has yet been written on our constitutional and po-

litical history." Certainly the work had a profound influence on the generation of students during the years from 1876 to the close of the century. If later it was partly supplanted by American writings on the subject, it still stood among the works most widely relied on by students of history, politics, and constitutional law. Its influence was no doubt extensive, especially in the formation of opinion during the great upswing of capitalism after 1865.

Such in broad outlines and fragmentary hints is the history of the ways in which constitutional liberty as a limitation on the power of government has been interpreted to mean the economic liberty of the *laissez-faire* school of economists. Whether this interpretation is wholly wrong or without utility in the development of American society is not here the question. The important point to notice is that these concepts and ideas, economic, political, historical, of the interpreters of the Constitution—in books and in the schools—came to be an operative force in its practical application to the economic and cultural tensions of the United States. It was by the translation of *laissez faire* into constitutional immunity that clear insights into and frank avowals of the indissoluble relations of political action and economic well-being for all the citizens of a Great Society were lost, or evaded.

The problem now, as in all great periods of history, is the old and indeed eternal problem of human government: What is, in the present conjuncture of affairs, the proper balance of authority and liberty required by the security and welfare of American society and how can it be implemented in detail? To effect this balance and to implement it is the supreme task of statesmanship and the central theme of political science.



Chapter X

Administration a Test of Ideal and Power

A CONSTITUTION setting forth an ideal of some kind to be realized and a government endowed with power under it, subject to its limitations, are but the beginnings of political achievement. At the threshold of operations comes the enactment of legislation in detail amplifying the outlines of the constitution and establishing the agencies through which the constitution and legislation are to be put into effect, that is, are to be realized in the alteration of personal and economic relationships within society and in connection with government.

The making of laws is a relatively simple matter; it is easy for the legislature to appropriate money and declare that the government shall regulate the rates and services of railways or build and maintain a huge canal or a waterworks system. The legislature can proclaim its will in general terms and adjourn. The work of the executive department, on the other hand, carrying its will into effect, continues day and night; it involves the expenditure of great sums of money, the employment of hundreds or even thousands of people, the purchase and management of supplies and complicated equipment, and perhaps the property interests of millions of citizens. The legislature may embrace fifty or a hundred or five hundred members at most; the administration employs tens of thousands, hundreds of thousands.

As the work of the administration runs to the roots of modern society, touching every phase of social and economic life, so the manner in which it is conducted really may determine the destiny of the state. If it is conducted wisely and efficiently it may render incalculable services to the people; if it is managed justly it will command the affection of those whom it serves, building the foundations of a social order on the respect and esteem of all classes. If it is inefficient, unjust, and brutal, it may cast discredit upon the established order and lead to its disintegration and decay. It was not without reason that the poet exclaimed

For forms of government let fools contest;
Whate'er is best administer'd is best.

This is not the whole truth but it is a fundamental element of the whole truth.

The Function of Administration

Every enterprise in the Great Society, as well as the Great Society itself, rests upon administration. Industry on a large scale depends upon organization—upon the management of large numbers of employees of different crafts and arts and the disposition of material goods. In some industries the administrative organism is national and even international in its range. Thousands, hundreds of thousands, of men and women must be brought together and distributed among various departments of production. They must be graded in a vast economic hierarchy, with skilled engineers and managers at the top and simple day laborers at the bottom. They must be assigned specific and appropriate tasks in the operation of the organization. They must be directed, controlled.

The state in the Great Society, like the private corporation, also rests upon administration. Once the administrative functions of the state were simple: they consisted mainly of

tax collection and police and military control. The warrior and the record keeper were the prime agents of the state. But as the state is transformed from a police-state into a service-state, the entire governing process is profoundly changed. The state takes on the character of a great industry. It still collects taxes and maintains order, but those are now subsidiary operations. Today the state is really a great producing agency. It constructs public works: canals, railways, waterworks, hydroelectric plants, sewer systems, street railways.

It is also a distributing agency. It operates railways, carries mails and parcels, manages forests, coal mines, and oil fields, and disposes of their products.

Besides acting as a producing and distributing agency, the state prescribes rules and standards for private enterprise on a large scale. If it does not own and operate the railways, it *regulates their methods and their rates. It subsidizes steamship lines.* It organizes and manages banks. It lends money to farmers and business concerns.

In short the state is an economic organization, not a mere police agency. Let us take a concrete example to illustrate the idea. Consider the administrative problems of supplying water to a great city. A supply of pure water in sufficient quantity must first be located. Plans for reservoirs, pipes, filtering beds, and pumping stations must be made. An army of engineers, artisans, and day laborers must be mobilized on the scene of action as an army is mobilized on a battle field. Vast quantities of material goods must be assembled or manufactured. Men must be set in motion to distribute and put in place the material things. Work must be planned, orders issued, and results checked up. Financial operations of great magnitude must be undertaken, capital must be secured, and the cost of construction estimated. Pay rolls for the employees and vouchers for the material goods must be made out. Account books must be kept. Operating expenses

must be discovered. Rates for the use of water must be calculated. Collections and disbursements must be made, just as in a great industry.

Even in the discharge of other functions like the control and promotion of public health, the state assumes huge administrative tasks. For example, if cholera or smallpox breaks out in a society, large operations must be undertaken. News must be carried to the responsible administrative authorities. Measures of prevention must be planned by experts. The existing cases must be located. Individuals and families must be isolated. The source of the disease must be located. Danger zones must be patrolled by the police. Provisions for treatment must be made. Hospitals must be put in order. Nurses and physicians must be mobilized. In short, a small army must be put in motion, and the success of the campaign against cholera depends fundamentally upon administration—upon wise planning and efficient operation.

Illustrations of the processes of the modern state might be multiplied, but this is not necessary. The economic character of the modern state in the Great Society is hardly a matter of controversy. This fundamental generalization stands fixed in facts: The modern state is a service-state; its primary functions are economic in character; its successful operation rests upon the mobilization of intelligence and skill and the efficient use of material goods. In a word, the modern state and modern industry tend to draw together and their operations tend to become alike. Both of them rest upon administration. No matter how much general intelligence there may be among the masses of people, the modern state cannot endure unless it can command administrative skill.

This problem is therefore presented: Can the science of administration keep pace with the science of invention? Can the ordering and direction of human association, industrial and political, be developed into a science? Can the

human will master the natural processes set in motion by physical science and invention? This question, in my opinion, transcends in importance mere theories of state and all the contests of economic groups over the possession of material goods.

The Elements of Scientific Administration

What is the nature of the science of administration? How is it being developed? How can it be studied? What will be its role in the future?

It is interesting to note that as yet there exists nowhere a monumental treatise on the whole science of administration. There are, it is true, many treatises on business administration: on banking, shipping, transportation, industrial management, and the like. There are also many treatises on public administration. But few attempts have yet been made to construct the generalizations of the science upon the data of human experience in all administration and government. Moreover, the science of public administration has long been entangled in the concepts which originated in the age of the police-state. It has been in fact essentially legalistic or logistic in conception.

This is to be explained historically. When the functions of the state were simple, when they were confined to tax collection and military control, only two types of administrators were required; namely, warriors and lawyers. Lawyers were necessary because the state operated according to certain decrees and ordinances. The functions performed by the state in its early stages did not spring out of the economic and industrial processes, but out of the orders of the king or ruling authorities. An understanding of the law was, therefore, the prime requisite for the successful administrator. Another development in the state gave more influence to the lawyer. Rather early in its history the state took away from the community the administration of justice and vested

that function in the hands of public authorities. In time the legal profession flourished. The administration of civil law and orders fell into the hands of that profession. The lawyers were the advisers of the crown. They drafted the laws and orders promulgated by royal authority. They wrote treatises on the state.

Thus it came about that the first books on public administration were written by the lawyers. This was true in America as well as in Europe. The first works on *Verwaltung* in Germany were on *Verwaltungsrecht*, the law of administration. When the School of Political Science was founded at Columbia University, the leaders in the study of government were men trained in law. The first great American work on public administration was Professor Frank J. Goodnow's *Comparative Administrative Law*. Law was the beginning if not the end of administration.

All this was perfectly natural. The study of the law is essential to successful operation by public administrative authorities. No public officer can begin his work without knowing the nature of his legal rights, duties, and obligations. Moreover, the study of the administrative law could be carried on in an academic manner. The only tools needed by the student were books—the statutes and decisions of the courts. For a long time it was thought that a student mastered the subject of administration in mastering the rules of law governing administrative authorities. In a very limited sense this was true. Thus it came about that in the construction of the science of public administration the lawyers were at first predominant. The processes of legal reasoning almost monopolized the technique of the science. A successful student of public administration was one who knew the rules of law, the decisions of the judges, the definitions, distinctions, and verbal expressions common to legalistic thought.

While the lawyers were monopolizing the science of public

administration there was growing up outside the academic world an inchoate science of industrial administration, known as scientific management. The origins of this new and significant movement in human thought have been traced back as far as 1832, when Charles Babbage, an English student of industry, wrote his treatise on *The Economy of Manufacturers*. About fifty years later, Henry R. Towne, an American manufacturer and head of a large industry, sought to interest engineers and administrators in the aspects of management in industry. This seed fell upon stony ground, although Mr. Towne successfully applied some of his principles in his own factory.

It was not until 1903 that the modern science of management really began to take form. In that year, Frederick W. Taylor read before the American Society of Mechanical Engineers a paper on the principles of scientific shop management. This was the beginning of a flood of literature on the subject which has grown into a vast body of knowledge embracing experience, practice, and theory.

Though many years have elapsed, the science is still in its initial stages. Many absurd claims have been made in its name, and many false prophets have arisen to proclaim a new revelation. Nevertheless, the subject is being pursued with scientific zeal. Those who work at it have long since abandoned the narrow capitalistic view of the science and have widened the scope of their inquiries to include the social and political aspects of industrial administration. Engineering schools have begun to teach the subject.

This is not the time or place to trace the history and fortunes of new science of management, but a word should be said about its influence upon public administration. In 1907, four years after Mr. Taylor announced the results of his studies to the American Society of Mechanical Engineers, there was incorporated in New York City a new institution which was destined to work a profound influence on the

study of public administration in the United States. I refer to the New York Bureau of Municipal Research. The purposes of this institution among others were (1) to promote efficient and economical municipal government, (2) to promote the adoption of scientific methods of accounting and reporting the details of municipal business, and (3) to collect, classify, analyze, correlate, and publish facts as to the administration of municipal government.

Evidently the purpose of this institution was quite different in scope from that of the study of administrative law as then conceived and followed in the universities. The Bureau of Municipal Research was not primarily concerned with the law of public officers—their legal rights, duties, and obligations. It was concerned with the actual processes of administration, the study of the actual operations of public officers in managing finances, employing labor, and disposing of material goods.

It also differed in its methods of work. It sought its data not mainly in law books and judicial decisions—in printed words; it sought its data in the acts of public officers, in the facts of administrative work, industrial as well as public. The Bureau combined study of the printed page with the observation of operations. In idea and method, therefore, the Bureau of Municipal Research differed essentially from academic institutions.

That was not all. The science of administration as treated by lawyers was limited to the study of government administration. The rules and methods of private persons and corporations, even those engaged in the same operations as some public authorities, did not particularly interest the student of administrative law. So far as I am aware no student of the law of municipal health in that period ever supplemented his researches in the law books by a study of the sanitary rules and practices evolved by great industrial concerns. Indeed, to the best of my knowledge, no student of the law of

municipal health at that time ever traced the operation of a legal principle down to the concrete application to the actual health of individuals in specific cases.

The Bureau of Municipal Research, however, laid special stress upon the comparative study of *public* and *private* administration. It took as its concrete data the experiences of American manufacturing corporations as well as the experiences of public administration. It observed the ways in which private corporations managed finances and accounts, kept pay rolls, purchased supplies, and organized huge labor forces. In a word, it sought to unite in the science of administration a wide range of human administrative experience, public and private.

So at this point a fundamental statement seems warranted. The modern state is, as I have said, a service-state; many of its functions are economic; they approximate in many ways the operations of private industrial corporations. Since this is true, the science of public administration is not only essential to the state—to the Great Society; it must be constructed out of the experience of public and private operations. If, as some students imagine, the society of the future is to be a federation of economic corporations, then the science of administration must cover both domains of human experience and activity.

Although the new science of public administration is now in the process of making, certain of its elements have emerged and may be enumerated. Lest you might infer that it is merely a hope or a theory, I shall set down briefly some of these elements without enlarging upon them.

1. *Organization*. A collection of offices, bureaus, divisions, and agencies—each with its special functions—designed to effect the purposes of government and so ordered in relation to one another as to achieve a certain unity of force and direction, under a controlling mechanism and a sense of responsibility.

2. *Finance.* Taxation, revenues, and assessments. The collection, custody, and disbursement of funds. The budget is a financial plan covering proposed revenues and expenditures and expressing the general, over-all plan of the government, so far as it has a conscious and deliberate conception of its purposes.

3. *Accounting and reporting.* Methods of recording and reporting on the financial and physical operations and results of administration. In other words, instruments of control must be devised and concrete information must be developed for executives and legislators to furnish them the fact-basis for giving directions and measuring results.

4. *Personnel administration.* The assembly, training, and direction of large forces of labor, skilled and unskilled. Methods of promotion, payment, and management, health, insurance, and housing. This is a science which works out from concrete experience in large-scale management, public and private, into the field of human and social relationships.

5. *The purchase of materials.* The purchasing, manufacturing, testing, storing, distributing, and controlling of the material goods employed in administration and the measuring of results on the basis of experience and scientific tests.

6. *Technical methods.* Each branch of public administration, besides having financial, accounting, personnel, and supply problems, has also its own technology. There is, for example, the technology of public hygiene, street-railway operation, water supply, and the like. In each of these fields a science is being constructed out of the observation of natural phenomena and concrete human experience. When the experience of mankind in each branch of knowledge is systematized and placed at the disposal of the humblest administrative officer then something approximating the ideal will be reached.

Relation to Property and Politics

The science of public administration does not operate, however, in a vacuum. It is subject to the purposes for which it is used. The elements of administration are often the same, however, whether the purposes are public or private. For example, the physical processes connected with the construction of a waterworks plant are practically the same for the directing engineer, no matter whether the plant is built for a city or for a private company. The aim of the enterprise may be general welfare or private profits for the capitalists who furnish the funds. The physical side of the work is practically the same in both cases. Indeed, at bottom, the result of the enterprise must be public service even though the originating and driving motive in any particular case may be profit.

Nevertheless no science of administration can be constructed without taking into account both property and politics. Indeed, in a limited sense, politics and property are simply aspects of the same thing, the struggle of mankind over the distribution of material goods. It is impossible to imagine a Great Society without property and politics. The forms of property may change, indeed, are changing. A substantial portion of the material capital of the Great Society has passed into public ownership and in the distant future a still larger portion of such goods may become public property.

Still, the struggle over the distribution of wealth will not cease, as socialists sometimes imagine. It is wealth, goods for consumption, not capital used in their production, which is the chief object of human desire. Wealth will be produced, must be produced in any society that is to endure, no matter who owns the capital used in production. No doubt the common or public ownership of a vast amount of capital now in private hands would make a radical change in the problems

of administration. Many powerful factors of initiative and control would doubtless be eliminated, and new factors would be introduced. Nevertheless, even under a system of public ownership of capital on a large scale, the administrator would have to deal with most of the clashes, rivalries, and acquisitive instincts which now operate under a system of private ownership of capital.

We cannot have a Great Society without having a complex division of labor among engineers, accountants, electricians, transport workers, miners, managers, and day laborers. If the capitalists were entirely eliminated, these various groups would contend among themselves over the distribution of their joint product, as is indeed the case in Soviet Russia. It is true that a military dictator might compel them all to work for equal wages but it is highly probable that such a system of compulsory labor could not long endure; Russian experience confirms the suspicion. Neither would it be efficient in production. A purely agricultural society composed of free and equal landowning farmers might solve the problem of distribution in a "natural" way, by giving each farmer the product of his land and labor. In such an order there would be no economic clashes; neither would there be any need for complicated administration.

The modern society is a Great Society. It consists of many different groups woven together in a complicated process of production. In this society the administrator must operate. He will therefore confront political and economic conflicts on every hand. He will find that politics consists largely of group actions for the purpose of using the power of the state for group benefit. This will be true whatever may be the future form of society or the formula for the ownership of property.

The technologist of the future, in developing the science of administration, will therefore unite politics, economics, and natural science. He will apply to economics and politics the

methods of natural science, namely, observation, experimentation, trial and error. He will not be the abject victim of political dogma any more than of religious dogma, for he will know the origin and nature of both. He will endeavor to disentangle his thought processes from the phraseology of law and politics born in the age of the hoe, stagecoach, and sailing vessel. No order of society, save that of feudal anarchy, can do without his services. If the social order which we now see about us is dissolved, as was the social order of ancient Rome, it will be the function of technologists in administration to aid in reassuming an empire over the ruins produced by human folly and ignorance.

The Importance of Administration

If the above analysis of social evolution and social processes is sound, even in part, then it is evident that there is no other science more important in the present age than that of administration. The society of the future will be an industrial society, an economic society. The state of the future will be a state of service, an economic state, whatever its other functions. Technology will occupy the major portion of the field of public and private administration. If we continue to develop power, machines, and chemistry without a corresponding development of the science of administration, then we may destroy by physical violence—social and international wars—the fruits of the highest forms of human intelligence.

So, whatever may be the future, the science of administration will be an essential instrument of human welfare. To overthrow by violence any form of government is mere child's play as compared with the tasks of administering the functions of a Great Society. Lenin and his followers found it comparatively easy to pull down the weak political structure bequeathed by the Russian bureaucracy to the Kerensky government. On the morning after the revolution the Bolshe-

vists had possession of all the trappings of power—the army, the railways, the public buildings, and machinery of state; but although wearing the robes of power they were powerless. Where did they then turn? To the science of administration, including the Taylor system, the experience of American capitalism. In other words, administration—not the sword—is the key to enduring power in the Great Society.

It is evident from all that I have said about administration that the subject appeals to the constructive rather than the critical mind, to the spirit of action rather than of negation. It is true that the methods of research in technical administration must be as critical as those of natural science. The data of administration must be as rigidly scrutinized as the data of chemistry or mechanics; but the nature of the science is essentially constructive, because it deals with productive processes. It deals with the most extraordinary phenomenon of the universe, the apparent struggle of life toward form, balance, organization. No doubt administration may be made to serve the purposes of destruction, but surely that cannot be its chief end. If it is to be, then the Great Society is a Great Illusion drifting temporarily between original chaos and future ruin. Even if that is so, it seems nobler in mind to co-operate with forces that move toward order and mastery than to cultivate the barren field of negation. But I admit that this may be a matter of temperament rather than of metaphysics.

Whatever may be the future of property and politics in the Great Society, we may be sure that there will be a huge mechanical system of production and distribution. The sword may destroy them but it cannot set them in motion. Only administration can do that, administration broadly conceived and informed by an understanding of the social as well as physical processes.

If that is true, and it seems to be true, then research and education in the field of administration present some of the

most interesting and attractive activities of our age. The tasks before those who take this view are manifold in character. Natural science, politics, and ethics must be united. The administrative problems of the Great Society must be explored in every direction. The structure and functions of public and private corporations must be analyzed. The experience of private economy must be used to illuminate the problems of public economy. Administration must be conceived as a science of organizing and directing human forces at work on material goods. While detailed researches are being carried on in every field of administration, public and private, synthetic minds must be at work generalizing from specific conclusions. In a word, a science of administration must be constructed—not a dogmatic science but a growing experimental science.

As the science develops, education in the subject must keep pace. The importance of the subject and its elements can be made a part of the intellectual possessions of every student in the domain of public affairs. Careers will open to those who care to make a life profession in the field of administration. Training schools in public and private administration, instead of being separate as at present, will be united. The spirit of the Great Society will penetrate both. A knowledge of and interest in the social results of industry and administration will give understanding to those who work in the public and the private fields, which are closely related in fact, and economics and politics will become Political Economy again.

The National Institute for Governmental Research

I may now give rein to my imagination and draw a picture of a National Institute for Governmental Research. It will have the dignity and position now attached to our institutions for research and training in the science and art of war-

fare. Is this too great a claim or assertion? It may well turn out that the science and art of administration, so indispensable to a Great Society, will prove to be the one division of thought and activity that can save it from dissolution through social and international conflicts.

Let me give a picture of this imaginary institute. It will have its plant of great buildings. One part will be a mechanical museum in which will be exhibited the machines, models, pictures, charts, and diagrams of the mechanical devices for all branches of public administration. Here the fruits of the inventive genius of the world will be assembled. Actual tests of devices will be made on a scientific basis and results recorded. The officials of the humblest city or village, or any other subdivision of government, will be given an opportunity to discover quickly what mechanical devices and material goods are placed at the disposal of public agencies.

The second part of the institute will be used for research. It will have a library of the technical books and periodicals. The recorded experiments of all countries will be here classified and noted for reference. At any time any student of any problem could find here the recorded experience of all countries in his particular field and could receive guidance as to the prosecution of further researches. Work in books will be supplemented by practical observation and experience.

In addition to the library, the institute will have a staff of specialists in such problems as public safety, public health, public works, social welfare, institutional administration, finance, accounts, and statistics. Each specialist will be an experienced worker in his field, not a mere academician. He will be given an opportunity to travel in other countries and to observe the technical methods employed there in his domain of activity. He will make researches, publish his observations, and serve as an adviser to public authorities.

A fourth part of the institute will be a bureau of service.

The function of this agency will be to give advice and render technical services to any public officer or government that may require assistance. •

Finally, the institute will have a training school for students who are planning to embark upon administrative work, in public or private service. So the accumulated experience and knowledge of the specialists in the institute will be transmuted into the living word—into enlightened human activity.

To sum up, the institute will place at the service of society the wisdom and experience of mankind in the solution of its administrative problems. It will be the chief center for advancing the science of administration—the science indispensable for the success and perpetuity of the Great Society.

Administration as a Science

The term "science" of administration has been used. There are many who object to the term. Not long ago one of the most distinguished British writers on government and politics ridiculed the idea in my presence. He said that there is no such thing as a science of administration, that trying to teach it is folly, and that the very notion of training anybody in it is ridiculous.

Now if by "science" is meant a conceptual scheme of things in which every particularity covered may be assigned a mathematical value and all particularities covered and in process may be exactly expressed in a differential equation, then administration is not a science. In this sense only astrophysics may be called a science, and it is well to remember that the mechanical laws of the heavens tell us nothing about the color and composition of the stars and as yet cannot account for some of the disturbances and explosions which seem accidental.

If, on the other hand, we may rightly use the term "science"

in connection with a body of exact knowledge, derived from experience and observation, and a body of rules or axioms which experience has demonstrated to be applicable in concrete practice, and to work out in practice approximately as forecast, then we may, if we please, appropriately and for convenience, speak of a science of administration. It is as much a general science as economics or psychology or biology, more of a science than history or politics. The Oxford English Dictionary tells us that a science is, among other things, a particular branch of knowledge or study; a recognized department of learning.

The more modest writers of distinction among contemporary scientists, such as E. W. Hobson, have surrendered the mechanical materialism of the mid-nineteenth century, which insisted that all things—both physical objects and organic life, including human beings—are subject to law and can be described in mechanical terms. They do not deny that all things material and human may be subject to law. They just honestly confess that they do not know it. They are content with finding what they call “deterministic tracts” of matter and force which may be correctly called deterministic sequences. The engineer deals with such a tract when he takes a given volume of water at a given elevation and directs it downward against a given type of water wheel geared to a dynamo. His science enables him to determine in advance, by a knowledge of the factors involved, that the operation will produce a given result which can be counted upon with decided assurance. Scientists also proceed by analysis and classification, and some of their sciences have not advanced very far beyond the stage of classification. Even that is useful. We use classifications when we choose ginger ale instead of corn whiskey.

I should myself prefer to limit the term “science” to bodies of knowledge which are wholly deterministic in their rules or axioms. But the human race, as demonstrated by the dic-

tionaries, persists in using the term "science" in its etymological and broader sense. I bow to the verdict of usage, and, moreover, I find no word more convenient and exact, than the term "science" to cover the body of knowledge and practice called "administration."

I have said that administration is as much of a science as economics. It is, in my opinion, far more of a science. Economics has been and still is primarily descriptive. It seeks to describe the actual economic conduct of vast masses of human beings operating within and between nations and the movement of such phenomena as prices, wages, and exchanges. The calculations of the economist are constantly subject to the violent changes introduced by politics—changes which are unpredictable and incalculable. The English body of economic knowledge is not very applicable in Germany or Russia. Moreover, the economist is not an operator. He does not operate railways and factories, testing out his theories in practice. He is not at all concerned with the concrete problems of starting an operation or system. Save in rare cases, the economist is a mere observer.

The case of administration is different in fundamental respects. The economist is dealing with what is sometimes called, erroneously, I think, a natural order of things, at least, with things that operate, it is said, unconsciously and automatically. The administrator is more like the engineer who constructs a power plant, that is, he is concerned with the realization of conscious human purposes by the conscious use of human beings and materials. It is true that the mere student of administration may be just an observer, but he does not merely observe natural, unconscious, and automatic operations. He observes the formulation of human purposes, consciously and deliberately, and operations designed to effect given results. And he sees calculations of results in advance realized later in practice with a high degree of approximation. The degree of approximation between advance

calculations and results is not often, if ever, as exact as in the case of a hydroelectric plant, but it is constantly exact enough for practical purposes.

In other words, there are in administration things analogous to, if not identical with, the mechanical tracts or deterministic sequences of physics. If, for example, it is decided by government to accomplish the purpose of providing compensation at given rates for men and women employed in industry who sustain injuries in connection with their occupations, the administrator can, like the engineer, estimate in advance the probable cost of such a design, indicate the types of officers and employees necessary to administer the design, and the administrative procedures appropriate to the whole process from beginning to end. And, as in the case of the hydroelectric engineer, the administrator later sees the results of his operations and can compare them with his advance estimates. There are more variables and incalculables in human affairs than in hydroelectric affairs, but even so administration achieves predetermined results with an approximation which is often amazing for its exactness. If administrative designs and estimates were not realized in practice with a high degree of exactness, both industry and government would collapse.

Growth of Administrative Research

And if the experience of natural science is any guide, then as the science of administration advances, we may reasonably expect it to take on an increasingly deterministic character. As research, scientific societies, and the exchanges of knowledge and hypotheses by natural scientists have advanced the exactness of knowledge in the domain of natural science, so we may expect research, administrative societies, and the exchanges among administrators to advance the exactness of knowledge in the domain of administration.

Already, we may truly say, we have an enormous body of exact and usable knowledge in the domain of administration. It would be easy to list thousands of volumes and articles on the subject, from the hands of high competence. I have seen this body of literature grow from a few items in 1898 to an enormous mass in 1941. Every informed and competent person in the field of administration knows this to be a fact. During this period I have seen the number of research workers increase from a mere handful to hundreds. This is a fact also, at least for informed and competent persons. During this period the opportunities for lifework in administration have multiplied many times. This is also a fact, for informed and competent persons. I dare say, though I shall not try to prove it, that the body of exact literature in administration is many times larger than the body of exact literature in natural science when Bacon, Galileo, and Newton began the revolution in natural science three hundred years ago, and is at least as exact as the literature of history, politics, economics, and classics, now widely used in our colleges and universities. During this same period I have seen the number of societies and organizations among administrators, local and general, increase from nothing to fifty or sixty.

Now anything that is known can be communicated, can be imparted to youth. In other words, this body of administrative literature can be taught to young men and women; perhaps also to the aged, if they are not hopeless. And it is possible by tests to discover whether or how far the process of communicating and imparting administrative knowledge has been successful, not precisely in all cases, but certainly as precisely as in any of the subjects dealing strictly with the humanities. Moreover, and this is highly important, young men and women who have more or less mastered the principles, maxims, and axioms of administrative science can now, by what is called in-training, fortify their formal knowledge by living experiences in and with administration. There is,

then, a science of administration, in the sense in which I have used the term, and it can be taught, learned, and used. There is nothing in anything that determines whether it must be taught in universities, but if universities have a warm and living interest in the future of our government and civilization, they will teach it, and public officials and politicians will take note of it, profit by it, and improve the public services as a result of it.

In speaking of training in administration, I have referred to young men and women. I should like to emphasize for a moment the training of women, for I know that men always give enough attention to themselves and to praising their own works. I am not going into any senseless arguments about equality. I shall merely refer to a few known facts. Every person who has ever had charge of an administrative office knows from experience that there are usually two or three women around who supply him with a large amount of his current information, often help him make decisions, and carry on while he is playing golf or spending three hours at lunch. Those who are familiar with the history of administration are aware that, despite opportunities decidedly limited, many women have made distinguished contributions to public service in America. I may cite, for example, Ella Flagg Young, who headed the public schools of Chicago from 1909 to 1915; Dr. S. Josephine Baker, whose work in child hygiene in New York is an open book for those who have eyes to see; and Mary M. O'Reilly, who mastered the administration of the United States Mint. That women have many administrative qualities of high order is a matter of common knowledge. That they are peculiarly fitted for certain types of administrative work is also well known. If we are wise, the public services will draw fully upon this great reservoir of intelligence, loyalty, and competence in the years ahead, especially when we begin to use all our resources instead of fighting over jobs. In our thought of

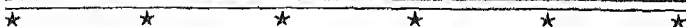
training for public service, we shall do well to break the path for this achievement.

Besides extending our training in the science of administration, we must increase our provisions for research in administration. We must do this in our universities, special institutions, and in the great divisions of government. I shall refer particularly to the last. Slowly our administrators and politicians are realizing the importance of research and planning as adjuncts to the successful administration of any complicated affairs, especially where constantly changing circumstances alter the situation. From the very beginning of scientific management, advance planning has been deemed the clue to successful results, and research has been deemed indispensable to planning and execution. Great administrators and students of the subject know how vital this is to effective administration, and I need make no exposition of the topic. As administration becomes more and more scientific, that is, as it advances in exactness of projection, forecast, and results, it will raise planning and research to a top position in thought and practice. Natural science and technology have done this with amazing effectiveness. Without the inquiry into relevant facts and without the blueprint, they would be on the level of astrology.

One more phase of the subject and I have finished. From the establishment of the Royal Society in England in the seventeenth century to the present, with increasing emphasis, it has been demonstrated that societies of scientific workers have contributed to the advancement of science in every direction. They have provided formal exchanges of knowledge and hypotheses. They have afforded opportunities for the contact of individuals, which is a vitalizing stimulus to individual activities. They have enlisted public interest in, and support for, scientific work. Already various associations of persons interested in administration, private and official, have been formed in the United States and have proved their

usefulness. A society concerned with administration in itself, as distinguished from the administration of particular functions, such as highways or public health, has been established. It does not neglect the specific and the concrete, but concentrates on the development of the methods, procedures, and axioms common to all branches of the public service, and by rigorous general thinking stimulates and guides thought about single specialties. It serves the science of administration as scientific societies have served natural science.

In all this I have not been unmindful of the great context of history and civilization in which administration works. I am not among those who profess to find the simple causes of national grandeur or sublime civilizations or the decline of nations. But I do observe in the histories of Greece and Rome records which show that the incompetence of administration and the breakdown of administration accompanied the disintegration of the state and civilization. And I am sure that, if we are to bring our resources, skills, and powers into full and noble use, if we are to build a public and private economy that can sustain an enduring society, if we are to provide the conditions necessary to the full flowering of civilization in America, we shall have to rely upon the constant advancement of administrative science. Thus we may be worthy of our heritage and our opportunities.



Epilogue

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THE foregoing statements of facts and opinions, although many of them may be called fundamental, do not cover, of course, all the institutions, practices, habits, customs, and ideas which may be regarded collectively as the American system of government. In the nature of things this must be so. Nor, it is probable, can any person, no matter how well informed, describe this system in its fullness exactly as it is. Words may, more or less precisely, describe practices as they are, but they cannot convey to the reader the sentiments, motives, and intimate knowledge of the practitioner himself. Words carefully chosen do convey ideas, with more or less precision, to persons competent out of study and knowledge to reproduce these ideas in their minds. Yet the exactness is not the kind of exactness that appears when a three-foot model of a hundred-foot machine is made with mechanical conformity to the original. This is another way of saying that no book on government tells the whole truth and nothing but the truth about any system of government, for government is life, not mechanics.

Even so, it is my conviction that the statements made in the preceding pages, directly or by implication, deal with essentials of the American system, which are requisite to any informed understanding and discussion of it. And such informed understanding and discussion were never more

material to our national security and advancement than at this present hour in world history. On every side the American system of government is under attack by powerful enemies and sometimes by pretended friends. It is said, for example, that democratic institutions and constitutional practices are obsolete, that government by sheer force under a dictator raised to power by violence is a better system, the last and final form of government for mankind. Indeed, it is predicted by a few writers, with a kind of omniscient assurance, that the American system is on its way out and that some form of dictatorial authority is soon to be established here.

Any reader can without difficulty find at hand a number of such dire prophecies. They have, in fact, appeared at nearly every stage in the development of the United States from 1776 to the latest hour. During the Revolution vociferous Tories were sure that Americans could not govern themselves and would return to a monarchy or fall under a despotism of some kind. Disgruntled Federalists saw the end of the world when Jefferson was elected in 1800. Southern Confederates, claiming the Constitution for themselves, charged Lincoln with destroying it and erecting a sort of Caesar's empire on its ruins. Any person familiar with recent newspaper headlines can easily compile a catalogue of such confident predictions, usually based on the experience of Europe or Asia.

While it is always well to be on our guard against perils within and without, it is equally appropriate that, in discussing European experiences, ideologies, and political philosophies, we should distinguish between the history of Germany or Italy, for instance, and the history of the United States. Americans have had more than two hundred years of experience in self-government. American institutions are rooted in practices, customs, habits, sentiments, and experiences far deeper than mere constitutions and legal ex-

pressions. Never in their history have Germans or Italians had political experiences paralleling those of the Americans and in similar conditions of economy and social life. Never in all their history have the Germans made a revolution against authority imposed upon them by force; the so-called revolution of 1918 was merely a passing war phenomenon.

It is this deep-rooted experience, historical and practical, which distinguishes the American system from all forms of dictatorial government. Efforts have been made here from period to period to apply dictatorial methods. In their desperation, Federalists tried to suppress all criticism by rushing through the Alien and Sedition Acts. The Jeffersonian upheaval of 1800 repudiated them. During the Civil War, dictatorial powers were exercised in various respects, and the permanence of despotism was predicted, but at the close of the conflict constitutional government supplanted military government. Immense powers were conferred upon President Wilson during the World War and often exercised with needless severity, but abuses of power were attacked even while the war was raging and at the conclusion of the struggle hysteria receded and constitutional processes were restored.

It is against the tenacity of American experience and practice that the smooth phrases of the new ideologues must be measured, if knowledge, as distinguished from mere rhetoric, is to be the aim of study and the basis of action. The frenzied and thoughtless are always prone to fly from evils at hand to greater evils which they cannot imagine until a more cruel fate has closed in upon them. They contrast the reality which they know with the soft moonshine of their dreams, only to find reality with them on the morning after their "day." But the wise potter who would fashion a new vessel knows the clay with which he has worked and must work.

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